



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 23.03.2023***
Pronounced on:25.05.2023

+ **BAIL APPLN. 753/2022**

MOHSIN @ VICCKY PAHALWAN Petitioner

Through: **Mr. B. S. Chaowdhary and Ms. Snehlata Rana, Advocates.**

versus

STATE (NCT) OF DELHI Respondent

Through: **Mr. Amit Ahlawat, APP for the State with Insp Rajni Kaul, PS Bhajanpura.**

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J

1. The present application is filed under Section 439 of Code of Criminal Procedure, 1973 (Cr.P.C) seeking regular bail in FIR No.477/2019 under Sections 302/120B/34 IPC read with Section 27 Arms Act at Police Station Bhajanpura.
2. It is submitted by learned counsel for the petitioner that PW-1 has been examined and she has only narrated that she has seen the accused running away in Gali No. 10 and waiving some weapons in their hands therefore she is not an eye witness. It is further submitted that petitioner has been falsely implicated in this case. It is further



submitted that there is not even an iota of evidence against the petitioner. It is further submitted that petitioner was arrested after two months of the incident and he has been in custody for the last more than three years. It is further submitted that only police officials remain to be examined.

3. On the other hand, learned APP for the State has vehemently opposed the bail application contending that due to previous enmity, 4 complaints were lodged against the petitioner by the complainant and his family which gives the motive for eliminating the petitioner. It is submitted by learned APP for the State that wife of the deceased, PW 1, has categorically stated that she has seen the petitioner running away with a katta in his hands. It is further submitted that as per the CDR locations, the accused persons were in close vicinity and also the calls details are there. In support of his contention, he further submits that co-accused Sahzad has informed the petitioner about the presence of the victim in the street where he was eliminated. Learned APP for the State fairly admits that there is no recovery of alleged weapons of offence from the petitioner. It is further submitted by learned APP that PW-4 who is the mother of the deceased has also supported the case of the prosecution. It is further submitted that PW-5, namely, Anwar, remains to be examined.

4. In the rebuttal, it is submitted by learned counsel for the petitioner that PW-4 has not stated in any statement that she is a witness to any of the fight between the parties as alleged.

5. I have heard the learned counsel for the petitioner, learned APP for the State, perused the status report and records of this case.



6. In the instant case, the allegations against the petitioner are that of conspiracy and committing murder of one Nazim. PW-1, PW-3 and PW-4, according to the prosecution, are the material public witnesses. Learned counsel for the petitioner has filed the testimonies of these three witnesses on record and has referred to their testimonies during the course of the arguments to bring home the point that none of them is the eye witness to the incident, therefore, their testimonies cannot be relied upon.

7. PW-1 is the wife of the deceased; PW-3 is the younger brother of the deceased; and PW-4 is the mother of the deceased, at this stage it would not be proper to analyse the testimonies of all the three witnesses in great detail as one public witness is yet to be examined and there are other witnesses as well, though they may be police officials but their testimonies will have bearing on the outcome of this case. At this stage, in depth analysis of the testimonies of above mentioned witnesses may prejudice the case of either of parties. However, all the above three witnesses i.e. PW-1, PW-3 and PW-4 have identified the accused persons during the course of their testimonies as they were known to the above said witnesses.

8. PW-1, PW-3 and PW-4 have categorically stated about the previous threats extended by the accused persons to the Nazim (since deceased). It has also come on record by way of testimonies of these witnesses that prior to the incident four complaints of threats to deceased Nazim have been filed in the police station and this fact has been stated by all the three witnesses *in tandem*.



9. PW-1 who is the wife of the deceased has identified the petitioner who was running away in the street with *katta* in his hand and minutes thereafter, husband of PW-1 was found dead. Now, any further analysis of her testimony and pointing out corroboration and contradictions in the testimonies of PW-1, PW-3 and PW-4 as submitted by the learned APP on the one side and learned defence counsel on the other side will not be proper.

10. Looking into the testimonies of the aforesaid witnesses and the allegations against the petitioner/accused, at this stage, no ground for bail is made out, the bail application is dismissed.

11. Nothing stated hereinabove shall tantamount to the expressions of any opinion on merits of the case.

RAJNISH BHATNAGAR, J

MAY 25, 2023/ib