

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

% *Date of decision : 17.05.2023*

+ **BAIL APPLN. 1103/2023**

MUSTAFA TYAGI

..... Petitioner

Through: Mr. Salman Khurshid, Sr.
Advocate with Mr. Deepak
Sharma, Mr. Pankaj Kapoor,
Ms. Nagma, Mr. Saif, Ms.
Ridhi Goyal, Mr. Sidra Khan
and Mr. Govind Sharma,
Advocates.

versus

STATE (N.C.T. OF DELHI)

..... Respondent

Through: Mr. Amit Ahlawat, APP for the
State with ACP Satender Singh
and SI Yogendra Kumar, PS
Hari Nagar.
Mr. Sumit, Advocate for
Complainant.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J (ORAL)

1. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No. 354/2022 under Sections 307/34 IPC and 25/27/54/59 Arms Act registered at Police Station Hari Nagar.

2. In brief the facts of the case are that on 07.05.2022, the complainant was coming from Kalra Hospital on his scooty along with his uncles namely Ajay Pal Choudhry and Yashpal @ Jassa who were

in their Innova car. It is alleged that at about 7:45 PM, when they reached near Tihar Village Graveyard, due to traffic congestion they slowed their car and suddenly three persons from Salman Tyagi's gang started firing upon the complainant's uncles with the intention to kill them and also shouted at them that now see the consequences of screwing Salman Tyagi and thereafter, within flash of some moments the above three assailants fired about 20-25 rounds/bullets. It is further alleged that when complainant's uncle, namely, Yashpal @ Jassa who was driving the car tried to escape from the spot, the alleged assailant, having fire-arms chased the car. Subsequently, both the uncles of the complainant sustained gunshot injuries and they were admitted to Kalra Hospital. As a result, the present case was registered. Later, Ajay Pal Choudhry succumbed to gunshot injuries and Section 302 IPC was added in the present FIR.

3. It is submitted by the learned senior counsel for the petitioner that the petitioner has been falsely implicated in this case. It is further submitted that the petitioner has not been named in the FIR and is made accused only on the basis of the disclosure statements of the accused persons. It is further submitted by him that even in the chargesheet, the present petitioner has been projected as a suspect as there is no evidence against him. It is further submitted by the learned senior counsel for the petitioner that there is nothing filed by the prosecution to show that there was meeting of minds between the petitioner and the accused persons to commit the crime.

4. On the other hand, it is submitted by the learned APP while vehemently opposing the present bail application that allegations

against the petitioner are grave and serious in nature. It is further submitted that there are statements of deceased Ajay and injured Yashpal who have categorically assigned role to the petitioner. It is further submitted by learned APP on instructions from IO that even proceedings under Section 82 Cr.P.C. were initiated against the petitioner but that were subsequently dropped and despite that the petitioner has not been joining the investigation.

5. In the instant case, during the course of the arguments learned APP has placed reliance on the statements of deceased Ajay and injured Yashpal recorded under Section 161 Cr.P.C., a perusal of the same reveals that deceased Ajay and injured Yashpal have specifically stated that the present petitioner along with his associates was continuously monitoring the movements of the deceased and the injured and even the petitioner use to say that because of deceased Ajay and injured Yashpal, Salman Tyagi has been arrested in smack case. As far the contention of learned senior counsel for the petitioner that there is no evidence on record to show that there ever was any meeting of mind between the petitioner and accused, it will not be out of place to mention here that conspiracy are hatched in secrecy and sometimes it is very difficult to have a direct evidence in this regard, but the circumstances of the case speaks for themselves.

6. Reliance can be placed on the judgment of Hon'ble Supreme Court in *V. C. Shukla vs State (Delhi Administration)* 1980 SCR (3) 500 wherein it was observed as follows:

“xxxxxxx it is true that in most case it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.”

7. The Hon’ble Supreme Court in ***CBI Vs. Anil Sharma (1997) 7 SCC 187*** observed as follows :

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

8. Therefore, relying upon the judgment ***CBI Vs. Anil Sharma*** (Supra), and looking into the allegations against the petitioner which are grave and serious in nature and the fact that the petitioner is not joining the investigation, I am not inclined to grant anticipatory bail to the petitioner. The bail application is, therefore, dismissed.

9. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

MAY 17, 2023/p