

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

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Date of Decision: August 03, 2023

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BAIL APPLN. 1269/2023**AMIR @ MUNNA @ SHAHZAD****..... Applicant**

Through: Mr. Amit Chadha, Mr. Pranav Gupta,
Ms. Swati Chawla, Mr. Atin Chadha,
Mr. Arif, Mr. Siddhant Verma and
Ms. Smriti, Advocates

versus

STATE OF NCT OF DELHI**..... Respondent**

Through: Mr. Mukesh Kumar, APP for the
State with SI Suresh Kumar, PS. New
Usmanpur

CORAM:**HON'BLE MR. JUSTICE SAURABH BANERJEE****J U D G M E N T****CRL.M.A. 10361/2023 (for exemption)**

1. Allowed subject to all just exceptions.
2. The application stands disposed of.

BAIL APPLN. 1269/2023

3. The present application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in FIR No. 549/2017 dated 13.07.2017 registered under Section(s) 302/120B/212/34 IPC and Section 27 of the Arms Act, 1959 at PS: New Usmanpur.
4. As per FIR, on 12.07.2017 at about 7:15 PM the complainant, brother



of the deceased, went outside to call the deceased when he was sitting near the khokha near Fire Station wall with his friends, when two motorcycles stopped near him, out of which, one of the co-accused, sitting behind on the motorcycle driven by the applicant herein, shot the deceased and one of his friends and then fled from the scene. The deceased was then taken to the Jag Parvesh Chander Hospital, where attempt was made to resuscitate him but he was declared dead, whereafter the present FIR was registered.

5. During the course of investigation, the applicant and other co-accused were arrested on 20.07.2017. After filing of the chargesheet in October, 2017 charges were framed on 18.01.2018. Presently, the trial is at stage of prosecution evidence.

6. Notice was issued and Status Report and Nominal Roll were called for.

7. Learned counsel for the applicant submits that the applicant has faced incarceration for almost 6 years and 18 out of the 40 witnesses are yet to be examined, the trial is likely to take long during which the applicant should languish behind bars. He further submits that the alleged murder weapon has already been recovered from the co-accused and no further recovery has to be made from the applicant. He also contends that the material eyewitness namely Rizwan has also turned hostile, and further that due to the differences in the testimonies of the brother of the deceased Yasin and Guddu, there are serious loopholes in the case set up by the prosecution.

8. Lastly, learned counsel for the applicant submits that the applicant has been released on interim bail on previous occasions, and on each such occasion, the applicant has not misused the liberty granted to him and has duly surrendered on time. Learned counsel has relied on the judgements in



Kali Ram v. State of H.P. (1973) 2 SCC 808, *Gangadhar Behera v. State of Orissa*, (2002) 8 SCC 381, *Prabhakar Tiwari v. State of U.P.*, 2020 (11) SCC 648, *Jabbar Ali v. State of Assam* 2022 SCC OnLine SC 1440, *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51, *Mohd. Tahir v. State*, 2022 SCC OnLine Del 154, and *Mohd. Hakim v. State (NCT of Delhi)*, 2021 SCC OnLine Del 4623, to support his arguments.

9. As per Nominal Roll, the applicant has been in custody only for a period of 5 years and 13 days as on 27.05.2023 and there are 5 other FIRs against the applicant involving Section(s) 307, 379, 302 IPC and provisions of the Arms Act wherein though, he has been acquitted in 3 cases, trial is pending in 2 remaining cases. It is further stated therein that the overall jail conduct of the applicant has been unsatisfactory as he has been punished on 2 occasions on account of recovery of tobacco and for quarrelling and abusing co-inmates.

10. Learned APP for the State, relying upon the Status Report, submits that during investigation, the accused persons, including the applicant disclosed their motive for murder. He opposes the grant of bail on the ground that the applicant is a habitual offender as he is involved in 2 other FIRs.

11. Learned APP for the State has handed over the MLC dated 12.07.2017 which mentions the name of the deceased's brother as Yasin who took the deceased to the hospital and the testimony of the said Yasin recorded before the learned Trial Court. The same is taken on record and is not disputed by the learned counsel for the applicant.

12. This Court has heard learned counsel for the applicant and learned APP for the State and gone through the relevant documents and judgements



on record.

13. The fact that the applicant has also been involved in different FIRs under similar Sections 307, 379, 302 IPC and provisions of the Arms Act involving heinous offence(s) from time to time and as the trial is underway and considering that the Nominal Roll, which discloses that his overall jail conduct has been unsatisfactory for various reasons, which compels this Court, to deny the grant of bail to the applicant under the present circumstances at this stage. Therefore, considering the nature and gravity of the offence involved and taking into account that the trial is underway, this Court feels that there is a likelihood of the applicant influencing the witnesses in due course. Although the final outcome of the present proceedings and the punishment to the applicant, if convicted, are not the only deciding factors, however, being relevant factors this Court, additionally, is not inclined to grant any leniency to the applicant and thus, he not be released on bail.

14. This Court is conscious of the conditions for granting bail to an accused, which are [Re.: *Prasanta Kumar Sarkar vs. Ashis Chatterjee* (2010) 14 SCC 496; *State of Uttar Pradesh vs. Amaramani Tripathi* (2005) 8 SCC 21; and *Deepak Yadav vs. State of Uttar Pradesh* (2022) 8 SCC 559]:

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii. nature and gravity of the accusation;
- iii. severity of the punishment in the event of conviction;
- iv. danger of the accused absconding or fleeing, if released on bail;
- v. character, behaviour, means, position and standing of the accused;
- vi. likelihood of the offence being repeated;
- vii. reasonable apprehension of the witnesses being influenced; and
- viii. danger, of course, of justice being thwarted by the grant of bail.



15. In the considered opinion of this Court, the reliance upon the aforementioned judgments placed by the learned counsel for applicant is misplaced under the facts and circumstances of the present case.

16. In view of the factual matrix involved and the settled position of law and keeping in mind the precautions to be taken while granting bail to any applicant involved in heinous offence(s) like the present one, this Court has no other option but to refuse the grant of bail to the applicant at this stage.

17. Therefore, the present application seeking grant of bail under Section 439 of the Code of Criminal Procedure, 1973 in FIR No. 549/2017 dated 13.07.2017 registered under Sections 302/120B/212/34 and Section 27 of the Arms Act, 1959 at PS: New Usmanpur, is hereby dismissed.

18. It is clarified that the observations made on the merits of the matter, if any, are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J

AUGUST 3, 2023/akr