

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

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Reserved on : 20.03.2023

Pronounced on : 28.03.2023

+ **BAIL APPLN. 2060/2022**

SIRAJUDULLA

..... Petitioner

Through: Mr. Ashish Negi, Advocate.

versus

STATE

.... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with ASI Dilbag Hussain, P.S. Tigri.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 186/2019 under Section 302/34 IPC & 27 Arms Act registered at Police Station Tigri, Delhi.

2. In brief, the facts of the case are that on 09.07.2019, a PCR call vide DD No. 45 A regarding a firing incident was received stating therein that two boys after shooting one person had run away. IO reached the spot from where he came to know that the injured had been

taken to Batra Hospital. IO obtained the MLC of the injured and the doctor opined the alleged H/o gunshot injury over right side occipital area with massive active bleeding and the victim was declared brought dead. IO recorded the statement of eye witness Niraj Sharma. On 10.07.2019, petitioner was arrested at the instance of co-accused and motorcycle bearing No. DL 3SFF-5233 which was used in committing the offence was recovered at the instance of the petitioner from his house which belongs to his father.

3. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, perused the status report and also perused the records of this case.

4. It is submitted by the Ld. counsel for the petitioner that PW 1 who is the brother of the deceased is not a trustworthy witness and has been falsely planted by the prosecution. He further submitted that all the material public witnesses have been examined and they have not supported the case of the prosecution. He further submitted that as the petitioner was shown to the witnesses, therefore, the petitioner was within his rights to refused the T.I.P. It is further submitted by the Ld. counsel for the petitioner that the petitioner was merely 19 years of age at the time of the incident and he is in J.C. since 10.07.2019.

5. On the other hand, Ld. APP for the State has vehemently opposed the bail application and argued on the lines of the Status

Report. It is further submitted by the Ld. APP that by no stretch of imagination it can be said that the public witnesses examined by the prosecution are hostile or they have not supported the case of the prosecution. He has further submitted that this is not the stage for analyzing the testimonies of the witnesses in detail. He further submitted that the motorcycle used in the commission of offence was registered in the name of the father of the petitioner and was recovered at the instance of the petitioner. He further submitted that the petitioner had moved a bail application bearing No. 391/2020 and this bail application after arguments was withdrawn on 13.12.2021 and since then there is no change in the circumstances as all the material witnesses were examined by the said date.

6. In the instant case, according to the prosecution, there are three material public witnesses and one of them i.e. PW-1 is the eye witness of the incident. All these witnesses have been examined by the prosecution before 13.12.2021 i.e. the date on which the bail application filed by the petitioner before this Court was withdrawn. So the testimonies of these three witnesses were before the Court when the bail application was withdrawn after arguments on 13.12.2021.

7. At this stage, detailed analysis of the testimonies of PW-1, PW-2 and PW-3 in order to point out their trustworthiness or contradictions in their statements cannot be undertaken as this might prejudice the case

of either of the parties. The allegations against the petitioner are specific to the point that two assailants had reached at the spot on the motorcycle which belonged to the petitioner/accused and the petitioner was driving the same. The motorcycle was later on recovered at the instance of the petitioner which belonged to his father. The petitioner had refused the TIP because according to him he was shown to the witnesses but that also cannot be looked into in detail at this stage. However, during the course of examination of PW-1 in the Court, the petitioner was identified by PW-1 therefore, in these circumstances, no ground for bail is made out at this stage. The bail application is, therefore, dismissed.

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

RAJNISH BHATNAGAR, J

MARCH 28, 2023

Sumant