



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

% ***Date of decision: October 04, 2023***

+ **BAIL APPLN. 2841/2023**

SALMAN

..... Applicant

Through: Mr. Viraj R. Datar, Sr. Advocate
with Mr. Deepak Kohli and Mohd.
Shariq, Advocate

Versus

THE STATE NCT OF DELHI

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for
the State with SI Pramod Kumar,
P.S. Anand Vihar.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The present application has been preferred by the applicant under Section 439 of the Code of the Criminal Procedure, 1973 seeking regular bail in FIR No.554/2022 dated 29.12.2022 registered under Section(s) 307/34 of the Indian Penal Code, 1860 and Section 27 of the Arms Act, 1959 at P.S. Anand Vihar, New Delhi.

2. As per FIR, on the fateful night of 29.12.2022 at around 12:30 AM, three persons including the applicant, entered a scuffle with the security personnel of B-Wing Club Cross River Mall, when the applicant allegedly shot at the Event Manager of the aforesaid Club. This led to registration of the present FIR, whereafter the applicant surrendered himself during the investigation on 13.04.2022.

3. Learned senior counsel appearing for the applicant submits that the



weapon allegedly used in the commission of the offence was recovered from bushes of a public place, and that too after more than five months. He further submits that as per the Medico Legal Certificate (“MLC”), the complainant had absconded from the Hospital and did not get his X-Ray done on the date of incident. He also submits that as per the MLC dated 07.06.2023, the complainant sustained simple injury. He further submits that FSL report is awaited and that too of no assistance or use to the prosecution as the bullet was not recovered from the body of the complainant, as it is still lodged inside his body. He lastly submits that the applicant had voluntarily surrendered.

4. Notice was issued, Status Report along with State Crime Record Bureau (“**SCRB**”) and Nominal Roll was called for.

5. As per the SCRБ, the applicant has been previously named in an FIR No.104/2019 registered under Section 25 of the Arms Act, 1959.

6. Learned APP appearing for the State, relying on the Status Report and opposing the grant of bail to the applicant, submits that the alleged offence is of a serious/ heinous nature which occurred at a public place wherein a weapon was discharged in the presence of various witnesses. He further submits that as per the MLC dated 15.06.2023, the injury of the complainant was declared dangerous. Qua the conduct of the applicant, he further submits that the applicant surrendered only when the proceedings under Section 82 Cr.P.C. were initiated against the applicant. He also submits that there are specific allegations in the FIR against the applicant and moreover, his presence cannot be doubted at the spot of alleged incident. He lastly submits that since all the witnesses have not examined and as the applicant has been involved in a similar case under



the Arms Act in FIR No.104/2019 registered under Section 25 of the Arms Act, the present is not a fit case for releasing the applicant on bail.

7. This Court has heard the learned (senior) counsel for the parties and has also perused the documents on record.

8. Records reveal that the present FIR is involving heinous offences committed inside a Mall, a public place having huge footfall. Though as per MLC dated 07.06.2023, the nature of injury is 'simple', however, as per MCL dated 15.06.2023 the injury is 'dangerous'. In any event, whether the injury was 'simple' or 'dangerous' is in itself a matter of trail. Furthermore, this is a case wherein, admittedly, though the applicant has surrendered after a period of more than three months, it is only after the initiation of proceedings under Section 82 Cr.P.C. against him.

9. Further, a perusal of the FIR reveals that the applicant is very much named therein and there is a specific role assigned to him, leading to a *prima-facie* conclusion that the applicant was very much present at the time, date and place of the alleged incident. Moreover, the SCRB filed alongwith the Status Report also reveals that the applicant is also involved in another FIR No.104/2019 registered under Section 25 of the Arms Act with PS. Special Cell.

10. The factum of the complainant having left the Hospital without getting his X-Ray done, cannot, in the opinion of this Court, come to the aid of the applicant, as the same has no relevance at the time of consideration of granting bail to the applicant at this stage.

11. 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.

12. In view of the aforesaid 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, the applicant has not been able to make out a fit case for grant of bail at this stage.

13. Needless to mention, observations made, if any, on the merits of the matter are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits of the matter.

14. Accordingly, the present application is dismissed in above terms.

SAURABH BANERJEE, J.

OCTOBER 4, 2023

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