

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

% Reserved on: 20th December, 2022
Pronounced on: 05th January, 2023

+ BAIL APPLN. 2671/2022
RAVI @ ANIL CHAUDHARY Petitioner

Through: Sh. Sidharth Agarwal, Sr.
Advocate alongwith Sh. Madhav
Khurana, Sh. Satyam Thareja, Sh.
Nitin Kumar Sharma, Ms.
Vasundhara Nagrath, Sh. Samarth
Luthra and Ms. Arshiya, Advs.

versus

STATE OF NCT OF DELHI Respondent

Through: Sh. Ritesh Kumar Bahri, APP for
State alongwith Insp. Ramesh
Prasad Singh, SHO, PS Laxmi
Nagar alongwith SI Inder Veer
Singh.
Sh. Ankit Kumar Vats, Adv. for
witness Inam.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. By this application the petitioner seeks regular bail in FIR No.226/22 registered at PS Laxmi Nagar under Sections 120B/302/149/34 IPC and Sections 25/27 of the Arms Act. The charge-sheet has been filed and charges are yet to be framed. The petitioner has been in custody since 10th February, 2022 and previous two applications for bail before the Sessions Court have been dismissed.

2. The background facts in the matter, as per the case of the prosecution, are that on receiving a PCR call *vide* a DD No.01A on 3rd

February, 2022 police from PS Laxmi Nagar reached the place of occurrence i.e. Girotra Store near Balaji Rasoyi Restaurant where they came to know that the victim, Mayur Chouhan, aged 23 years had been shifted to Max Hospital, Patparganj, Delhi. On reaching the hospital, MLC was received where the doctor had declared the victim as brought dead. Subsequently the FIR was registered on the statement of eyewitness Harsh Kumar. The eyewitness stated that on 2nd February, 2022 he was present with the deceased at his office when the deceased received a call from accused Vipin Nagar who asked him to meet at Balaji Rasoyi Restaurant. When they reached the restaurant, accused Vipin Nagar along with other associates reached there and the accused asked his companions to kill the deceased, who tried to escape but they followed him and shot him and then ran away from the spot. The petitioner was arrested pursuant to disclosures by various witnesses particularly of Md. Inam whose statement was also recorded under Section 164 Cr.P.C. Apparently as per the disclosure of the petitioner, a conspiracy was hatched between him, Nitish Kumar Bhardwaj and Vipin Nagar for attack and murder of the rivals Sunder Bhati and Himanshu Sharma living in Shakarpur area and Mayur Chouhan living in Laxmi Nagar area. The petitioner had assured Nitish Kumar and Vipin Nagar that he would help them financially and provide shelter to them till the matter cools down. As per plan, Vipin Nagar and Nitish Kumar along with associates viz. Chirag, Sidharth, Hardik, Kartik, Ashish, Jasvinder, Rahul Gupta, Ashish, Mudit Chouhan, Sumit Chandila, Harsha Gujjar, Navin Khatana and others gathered at the flat of Vipin Nagar and thereafter reached Shakarpur area and fired at the flat office of Sunder Bhati and Himanshu Sharma. Hardik told them that they had fired mistakenly at the wrong house, so they fled from there and assembled at

Preet Vihar petrol pump and called Mayur Chouhan to meet Vipin Nagar at Balaji Rasoyi Restaurant where they murdered Mayur Chouhan. As per the State, the petitioner gave Rs. 20,000/- in cash to co-accused Nitish Kumar and Vipin Nagar after the murder and also received mobile phones of Vipin Nagar, Jasvinder, Hardik, Kartik and Ashish which was supplied to him by Vipin Nagar after the incident and all these five phones were allegedly recovered at his instance from Yamuna Khadar, Vikash Marg.

3. The Ld. Senior Counsel appearing for the petitioner argued that the mere fact that the offence accused of involves Section 302 IPC itself is not a disqualification for bail since Section 439 Cr.P.C. does not contain an additional threshold which is provided with respect to such offences in Section 437 Cr.P.C. The Ld. Senior Counsel thereafter stressed on the fact that the petitioner was neither reported to be present on the spot of incidence by the eyewitness, nor in the dying declaration by the deceased, nor was he seen in the CCTV footage. To substantiate this contention, the Ld. Senior Counsel adverted to the following:

(i) The FIR which was based on the complaint of Harsh stated that when he reached Balaji Rasoyi Restaurant along with the deceased, some motorcycles and a Swift Car had come from which Vipin Nagar with 7-8 associates alighted and surrounded the deceased. When the deceased tried to escape Vipin Nagar shot him with his gun and the deceased received bullets on his back. Harsh then narrated the incident to his friend Aman over phone and sometime later Md. Inam (friend of the deceased) accompanied by Aman and the father of the deceased (Sanjeev Chouhan) reached the spot. Later, another friend of the deceased, Raman also reached the spot on his scooter.

(ii) The FIR further records the statement of Raman who confirms that he had arrived at the spot having got to know that his friend Mayur Chouhan had been injured. Raman mentions that on asking Mayur Chouhan he had disclosed that Vipin Nagar, Sumit Chandila, Hardik, Kartik, Chirag Sirohi, Nitish Bhardwaj, Rahul Gupta, Jasvinder Singh, Sidharth and Ashu Pandit had fired upon him and rushed away. This statement did not mention the petitioner.

(iii) Raman further stated that when he and Md. Inam were taking the injured Mayur Chouhan on the scooter to the hospital, he had disclosed that Harsha Gujjar, Mudit Chouhan @ Ashu, Omesh Nagar, Khacheru, Sidharth, Deepak Pahari, Chirag Sirohi, Rahul Tanwar and Naveen Khatana were also involved in the incident. This part of the statement also does not mention the petitioner.

(iv) In his statement recorded under Section 161 Cr.P.C. on 3rd February, 2022, Harsh does not make any improvement on what was stated in the FIR and the petitioner was still not named.

(v) As per the statement of Aman recorded under Section 161 Cr.P.C. on 3rd February, 2022, Aman identifies the faces in the CCTV footage and names Vipin Nagar, Hardik, Kartik, Nitish Bhardwaj, Chirag Sirohi, Rahul Gupta, Sumit Chandila, Harsha Gujjar, Ankit Lohia, Naveen Khatana, Jasvinder Singh and Mudit @ Ashu and Ashish, but does not name the petitioner.

(vi) The statement of the father of the deceased recorded under Section 161 Cr.P.C., states that he arrived at the spot and saw his son in an injured condition and his son told him that Vipin Nagar and various

associates (whom he specifically named) had come to shoot him, however, there is no mention of the petitioner in this as well.

(vii) Raman gave a supplementary statement under Section 161 Cr.P.C. on 4th February, 2022 which also does not mention the petitioner.

(viii) The statement of Md. Inam recorded under Section 161 Cr.P.C. on 3rd February, 2022 as well as another statement recorded on 4th February, 2022 also does not mention the name of the petitioner despite having stated that when they took the injured to the hospital he had mentioned various names of the associates of Vipin Nagar who had accosted and shot at him.

4. The Ld. Senior Counsel for the petitioner pointed out that the petitioner's name was neither mentioned by the eyewitness nor his friends, nor by his father who came to the spot while the deceased was in an injured condition and disclosing the names of the assailants, nor when Raman and Md. Inam took him to the hospital when yet again the deceased mentioned the names of the assailants. Rather, the mention of the petitioner comes in a statement recorded under Section 164 Cr.P.C. of Md. Inam on 9th February, 2022 when while reiterating what the injured Mayur had told them regarding Vipin Nagar and associates, he added that the injured Mayur had also mentioned that he had heard the assailants stating that they were going to the office of the petitioner thereafter. Notwithstanding that this was a belated introduction in an improved statement of Md. Inam which itself was shrouded in doubt, the ultimate essence of the statement was that the deceased had stated that he heard the assailants saying that they would go to the petitioner's office. As per the Ld. Senior Counsel for the petitioner, it was evident that the petitioner was not one of the assailants who was present at the

spot nor in the proximity of that area but as per the hearsay of Md. Inam the assailants had stated that they were planning to go to the office of the petitioner. The Ld. Senior Counsel for the petitioner also contended that even this allegation that the assailants had gone to the office of the petitioner after shooting at Mayur Chouhan is contradicted by the charge-sheet itself which shows that the assailants had gone to NOIDA and not to office of the petitioner.

5. The Ld. Senior Counsel for the petitioner drew attention of the Court to the other pieces of evidence like the mobile/CDR records which would at best show that the petitioner has spoken to Vipin Nagar and Nitish Bhardwaj twice at the maximum and the last call which was exchanged with Nitish Bhardwaj was 2 days prior to the date of incident and with Vipin Nagar 13 days prior to the incident.

6. As per the disclosure statement of the petitioner, on which the prosecution was relying upon, the five accused had given mobile phones to the petitioner for safekeeping which were recovered from the bushes behind the bus stop allegedly at the instance of the petitioner. The Ld. Senior Counsel, therefore, stressed that this fact of recovery was at best a post event fact while the prosecution case is of conspiracy as well which would necessarily involve only pre event facts. At best, the counsel for the petitioner contended that keeping the mobile phones for safekeeping or hiding them would involve an offence punishable under Section 201 IPC which is a bailable offence on its own standing.

7. It was further contended in response to the other involvements of the petitioner disclosed in the status report (7 in number) that the petitioner had been acquitted in one, discharged in one, matter was

compounded in three of them, and had been granted bail in FIR No.214/2022.

8. Countering the contentions of the petitioner, the Ld. APP submitted that even though the petitioner had not been named initially, he had clearly conspired in the killing of the deceased and these conspiracies are always hatched in secrecy, however, inferred from circumstances and the evidence available. Reliance was placed on the statement of one Sunder Bhati recorded under Section 161 Cr.P.C. who was a rival of Vipin Nagar as well as the petitioner. In his statement, he states that in November, 2021 he had had an altercation with Vipin Nagar and thereafter started receiving threats from him. He further stated that Vipin Nagar had a rivalry and litigation with his friend Mayur Chouhan. He further stated that he had seen Vipin Nagar and his associates on 2nd February, 2022 around 11.00 p.m. (though does not name the petitioner) and on seeing them he ran away and later came to know that these people had fired at Mayur Chouhan in the street behind. It was further contended by the Ld. APP that the petitioner is an influential person and may threaten the complainant as well as other witnesses and tamper with the evidence. It is also stated that some co-accused are still at large and, therefore, the petitioner would attempt to harbour them in case he was released. Countering the issue of pre-event and post event facts, the Ld. APP contended that as per Section 8 of the Indian Evidence Act subsequent conduct was also relevant.

9. In his rejoinder, the Ld. Senior Counsel for the petitioner stated that as per the facts stated in the FIR and from a perusal of the statements recorded no offence under Section 302 or 34 IPC was made out since the petitioner was admittedly not there at the spot when the

firing took place nor was he in the vicinity. At best an offence under Sections 212 or 201 could be pursued against the petitioner (assuming without conceding) which are both bailable. As regards offence under Section 120B facts as discovered were only post event and nothing had been discovered by the investigation to substantiate that there was a pre-event conspiracy. It was further contended that the statement of Sunder Bhati which the State was relying upon was totally irrelevant because he was not only a bad character of that area but also had stated his rivalry against Vipin Nagar and associates and, therefore, was unreliable as a witness on whom the prosecution could rely to substantiate the case. It was further contended that antecedents, if any, would not matter in offences which were effectively bailable. As regards the absconson of the other co-accused, the Ld. Senior Counsel for the petitioner contended that criminal jurisprudence is based on individual cases and not collective assessments, and therefore the merits of the petitioner's bail petition should be assessed on his individual facts and circumstances.

10. Having carefully perused the record and assessed the contentions by the parties, it is evident that none of the witnesses who would be presented by the prosecution including the eyewitness Harsh, Aman and Md. Inam, friends of the deceased who had reached the spot or the father of the deceased who had also reached the spot, had mentioned the name of the petitioner as somebody who was at the spot. Aside from the eyewitness Harsh, the statements of Aman, Md. Inam and the father all advert to what the injured Mayur Chouhan had stated to them while either on the spot or when he was being taken to the hospital. The only limited reference which points to the petitioner is the statement of Md. Inam which is a subsequent statement recorded 6 days after his initial statement where he adds to what had been apparently told to him by the

injured Mayur Chouhan. This addition was that as Md. Inam had heard Mayur Chouhan stating while he was in an injured condition and being taken to the hospital that Mayur Chouhan had heard the assailants stating that they were going to go to the petitioner's office thereafter. *Prima facie* this would indicate that the petitioner was definitely not present at the spot or in vicinity and that the assailants (or some of them) had an intention of going to the petitioner's office thereafter. Whether this plan of going to the petitioner's office thereafter fructified or was part of a pre hatched conspiracy or plan would be finally for the prosecution to prove during trial. However, at this stage there was nothing on record to suggest that there did exist this conspiracy and there was a plan in which the petitioner had conspired to kill the deceased. The only other aspect which the prosecution seems to be relying upon is the recovery of the five phones from the bush behind the bus stop at the instance of the petitioner which belong to the assailants. While the admissibility of this recovery would have to be proved during trial, mere possession of the phones of the assailants would at best invite an offence punishable under Section 201 IPC (causing evidence of the commission of offence to disappear with an intent of screening the offender). This offence under Section 201 IPC is bailable in all its various formulations as provided in the Section. The other possibility could be under Section 212 IPC which was to harbour the offender which was also bailable as per the provision. Considering the fact that the petitioner, as per the statement of witnesses, was not present on the spot of incident nor in the proximity but was merely implicated on the basis of hearsay by a witness that the assailants could have gone to his office post the event, and also that the recovery from the petitioner would still have to be proved in trial, and even if so proved would implicate him for offences which are bailable in nature,

the considered opinion of the Court is that since the trial would take substantial amount of time, there would be no purpose served keeping the petitioner in custody as an undertrial. The investigation stands completed and the charge-sheet has already been filed. The petitioner is not the main accused for firing at the deceased nor was he present at the spot and hence the offence under Section 302 IPC can only rope the petitioner within its ambit once either the element of conspiracy under Section 120B IPC or common intention under Section 34 IPC is proved against him. The previous involvements of the petitioner have either ended up in discharge or in acquittal or compounding or bail and, therefore, it cannot be said that the petitioner has been held guilty for any previous involvement. The mere suspicion or apprehension of the prosecution that the petitioner may end up tampering with evidence or harbouring the co-accused is not sufficient or substantiated at this stage to justify the continued incarceration of the petitioner. The Hon'ble Supreme Court has repeatedly held that it is the duty of Constitutional Courts to ensure there is no arbitrary deprivation of personal liberty and that bail is the rule and jail is an exception. Reference may be made to the decisions of the Hon'ble Supreme Court in *inter alia* **Prasanta Kumar Sarkar v. Ashis Chatterjee**, (2010) 14 SCC 496 and **Mahipal v. Rajesh Kumar**, (2020) 2 SCC 118 and **Prabhakar Tewari v. State of Uttar Pradesh**, (2020) 11 SCC 648. The petitioner's presence at the scene of crime being inconclusive at this juncture can only be confirmed during trial and cannot justify prolonged incarceration of the petitioner at this point of time.

11. In light of the above and that the trial in the matter is likely to take some time and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of

bail to the petitioner. Consequently, the petitioner is directed to be released on bail on his furnishing a personal bond in the sum of Rs.1,00,000/- with two sureties of the like amount subject to the satisfaction of the Ld. Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner has given his address in the memo of parties. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all his mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.
- vi. Petitioner shall report to the IO at PS Laxmi Nagar once every month in the first week of the month unless leave of absence is obtained from the Ld. Trial Court.
- vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the victim or any member of the victim's family or tamper with the evidence of the case.

Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

12. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

13. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

14. Order be uploaded on the website of this Court.

**(ANISH DAYAL)
JUDGE**

JANUARY 05, 2023/mk

