



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

% Judgment reserved on: 06.09.2023
Judgment pronounced on: 13.09.2023

+ **BAIL APPLN. 3610/2022 & CRL.M.(BAIL) 1469/2022**

SHASHANK JADON Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Manisha Bhandari, Advocate with Mr. Omkar Shrivastava, Mr. Divyadeep Chaturvedi, Mr. Ayush Jain and Mr. Shashwat Sidhant Advocates

For the Respondent : Mr. Nikhil Goel, SPP for CBI with Mr. Kartik Kaushal, Advocate. Mr. Ankur Mittal, Mr. Abhay Gupta and Mr. Sanjivan Chakraborty, Advocates for Complainant.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is an application under section 439 Cr.P.C., 1973 filed by the applicant seeking regular bail in FIR No. 207/2015, registered under section 302 IPC with P.S. Noida, Sector – 49, which was subsequently transferred to CBI and was renumbered as CBI RC03(S)/2016/CBI/SC-



III/ New Delhi.

2. The case of the prosecution is as under:-

- a. That, an FIR was registered on 13.04.2015 by Sh. Dharam Veer Singh u/s 302 IPC, 1860 at P.S. Noida, Sector 49, with reference to the murder of his son against unknown persons.
- b. That after registration of the case, investigation was entrusted to the then Station Officer Manoj Yadav.
- c. That the father of the deceased filed a writ petition before the High Court of Judicature at Allahabad, praying for transfer of investigation to CBI.
- d. That the case was transferred to CBI pursuant to the order dated 26.04.2016 passed by the High Court of Judicature at Allahabad directing transfer of investigation of FIR No. 207/2015 dated 13.04.2015 registered at P.S. Sector 49, Noida, District Gautam Budh Nagar, Uttar Pradesh (Case Crime No. 276 of 2015) and consequently, the FIR came to be registered by the CBI as FIR No. RC03(S)/2016/CBI/SC-III/NEW DELHI dated 14.06.2016 u/s 120-B r/w 302, 307, 398 & 201 IPC, 1860 & Sections 25, 27 of The Arms Act, 1959.
- e. That almost after a year of investigation, CBI came to the conclusion that conspiracy was hatched amongst the applicant herein Shashank Jadaun, Pankaj Kumar alias Pankaj Raghav (now expired) and Manoj Kumar to commit robbery of big vehicle like *Fortuner* Car from Noida-Ghaziabad Highway Area for earning some easy money. That allegedly led to the



accused persons making an attempt of robbing the new *Fortuner* Car from Ankit Chauhan since deceased on 13.04.2015 and gunshots were fired, resulting into the untimely demise of Ankit Chauhan while Mr. Gagan Dudhoria, co-passenger escaped. On 01.06.2017, the CBI claimed to have had a breakthrough, in that, the CBI allegedly found a car alleged to have been used in the crime and subsequently, the applicant Shashank Jadaun was arrested along with co-accused Manoj and it was revealed that the accused persons committed the crime to rob the *Fortuner* Car and to sell it to one Satpal Bhatti.

3. Ms. Bhandari, learned counsel appearing for the applicant submits that the applicant has been in judicial custody since 02.06.2017 till now barring 2 days of custody parole granted by this Court and hence, had undergone an incarceration for a period of approximately a little more than 6 years 2 months till date. Ms. Bhandari further submits that though the trial has already commenced, however only 34 witnesses out of 79 witnesses cited by the prosecution have so far been examined.

4. Learned counsel further submits that apart from the primary witnesses, particularly PW-5 who is stated to be an eye witness, witnesses of the forensic and serologists department have also been examined and discharged. She further submits that at this pace, the conclusion of the recording of prosecution evidence will take considerably long time. On that basis, she submits that the applicant cannot be incarcerated without any reasonable justification and since all the vulnerable witnesses have already been examined by the



prosecution, there probably cannot be any plausible reason of the applicant either tampering with the evidence or influencing the witnesses in any manner whatsoever.

5. Ms. Bhandari, learned counsel submitted that though the incident is stated to have occurred on 13.04.2015, the applicant was arrested only on 01.06.2017. In other words, she submits that delay in arrest of the applicant has to be read in favour of the innocence of the applicant.

6. Learned counsel laid great emphasis on the evidence of the PW-5 namely Gagan Dudhoria who is stated to be eye witness, to submit that the said witness was unable to withstand the cross examination and could not support his own story that he had witnessed the applicant shooting at the deceased. Learned counsel basis the aforesaid submission from the suggestions given to the witness that he had not seen the incident of firing as he had jumped down from the car and stood up only after the goons had run away.

7. Ms. Bhandari, learned counsel also submits that there is great scope of the witness being confused about the identity of the applicant in as much as it is on record that another co-accused person namely Pankaj Kumar @ Pankaj Raghav, who bore similar if not identical resemblance to the applicant, coupled with the fact that the gun which is stated to have been used in the firing belong to the said Pankaj. That apart, she submits that it was only upon the death of the co-accused Pankaj that the focus of the prosecution shifted from the said co-accused to the present applicant. Learned counsel draws attention of this Court to the fact that it was admitted case of the prosecution that the co-accused



Pankaj and the present applicant bore the identical tattoo on the left arm which may have led the witness to be confused about the identity of the real assailant. In other words, Ms. Bhandari, learned counsel submits that the applicant was innocent till such time the co-accused Pankaj was alive and after the death of Pankaj, a false case has been foisted upon the applicant.

8. In order to substantiate the aforesaid submissions, she painstakingly took the Court through the cross examination of the said witness.

9. Ms.Bhandari, learned counsel put forth the contention that PW-7 who was one of the prime witnesses turned hostile and did not support the case of the prosecution. So far as the allegation that the applicant had influenced the PW-7 whereafter PW-7 is stated to have turned hostile is concerned, Ms. Bhandari submits that the applicant had made precisely 2 calls to PW-7 from Dasna Jail, on 03.10.2021 and 03.10.2022 which is stated to be the birthday of PW-7. Learned counsel submits that it was only to give birthday wishes PW-7 that such calls were made since PW-7 himself admitted that not only was he a neighbor of the applicant but also his childhood friend. Thus, there is no reason as to why the prosecution should conclude that such calls were made only to threaten the witness.

10. So far the testimony of PW-7 is concerned, Ms. Bhandari, learned counsel took this Court through the entire cross examination of PW-7 to submit that the witness had turned hostile and had not supported the case of the prosecution on all material particulars. In fact, according to



Ms. Bhandari, the witness confidently denied the suggestion that there was any pressure or influence from the applicant.

11. Ms.Bhandari, learned counsel also submitted that though the applicant does not deny that the car which was used for commission of the said offence belonged to the applicant, the CCTV footage covering some part of the vehicular movement showed that the applicant had gotten out of the car at 03:57 p.m. and the incident occurred after he got down from the car. On this basis, she submits, that there is any amount of doubt as to whether the applicant was even sitting in the car when the alleged incident is stated to have occurred.

12. Learned counsel next points to the Order dated 31.07.2019 whereby the co-accused was granted bail by the learned Sessions Court and submits that the applicant be also released on bail on the grounds of parity.

13. Learned counsel submits that it is not doubted by the prosecution that the alleged pistol stated to have been used in the commission of the offence belonged to Pankaj, the deceased co-accused. If that is to be believed, she submits that the alleged recovery of 4 used cartridges found from the house of the applicant seems to be untenable for the reason that no prudent person who would commit such a ghastly crime, would keep the used cartridges from the said crime for the prosecution to seize and make a watertight case.

14. So far as the identification of the applicant is concerned, Ms. Bhandari submits that since the photograph of the applicant was flashed in the electronic media in a report covering the incident, the conducting



of TIP is of no relevance and cannot be relied upon at the present stage while deciding the bail application.

15. She submits that in view of the above, the applicant is entitled to be released on bail.

CONTENTIONS OF CBI:

16. *Per Contra*, Mr. Nikhil Goel, learned SPP for the CBI at the very outset, while emphasizing upon the conduct of the applicant and other co-accused persons in the present FIR, submits that the very factum of the transfer of the present FIR from UP Police to the CBI on the basis of untraceable nature of the accused persons including the applicant, clearly manifests the applicant has no regard of law. Learned APP further submits that it was only on the specific request of the UP Police, who was unable to trace the applicant as also the other accused persons for almost two years from the date of registration of the FIR, that the CBI was brought in to trace and arrest the accused persons.

17. Mr. Goel, learned SPP submits that the present case involves a ghastly crime committed upon a young man who was married for only 33 days from the date of incident before being shot down mercilessly by the applicant and the other co-accused persons, the motive being the robbery of the *Fortuner* car solely for the purposes of selling it to set off the surmounting loans etc. to be repaid by the applicant and the co-accused persons.

18. Learned APP further submits that the applicant has previous convictions and is also involved in other FIRs including one under Section 3/4 of the Gangster Act, 1986 and would surely be not only a



flight risk but such an act also portrays the mental depravity and propensity of committing such crime without remorse.

19. Learned SPP submits that though 79 witnesses were listed by the CBI, 33 witnesses have already been examined and 5 have already dropped from the listed witnesses. According to the learned SPP, there has been no delay, much less unnecessary delay in recording evidence of the prosecution witnesses and that the trial would conclude at the earliest. Learned SPP submits that keeping in view the nature of the crime and the diabolical manner in which the same was executed in broad daylight, the applicant ought not to be released on bail.

20. Learned SPP submits that the applicant had conspired with the other two accused persons to loot a vehicle for the aforesaid purposes for which the applicant himself got the number plates of his vehicle changed. He further submits that there could not be any reason, much less a plausible reason, as to why the applicant would go to the extent of changing the number plates if the vehicle was not to be used in the crime. Learned APP submits that the said witnesses through whom the number plates were changed are yet to be examined. That apart, the eye witness has categorically identified the applicant as also stated that it was the applicant who had fired 4 shots from the pistol. According to the learned SPP, the FSL has affirmed that the used cartridges which were recovered from the applicant were the same which were used in the commission of the offence and were shot through the said pistol which was recovered.

21. In order to buttress the aforesaid arguments, learned SPP



painstakingly read through examination-in-chief of the eye witness PW-5 to submit that the said witness has corroborated, in all material particulars, the case of the prosecution. According to learned SPP, nothing has been elicited during cross examination from PW-5 which would demolish the case of the prosecution. In fact, learned SPP points out to that portion of the testimony whereby the said witness had stated about the shot fired at him which missed him as he ducked and the bullet which got stuck in the left front seat of the vehicle was in fact recovered therefrom. He submits that PW-5 withstood this part of the testimony during his cross examination.

22. Learned SPP also laid great emphasis on the sub-section 1 of Section 437 Cr.P.C., 1973 to submit that a person ought not be released on bail if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. In the present case, according to learned SPP, the cumulative reading of the evidence so far recorded, clearly points towards the guilt of the applicant and thus, the bar under section 437(1) clearly disentitles the applicant from seeking any bail. Learned SPP submits that in any case, there are 2 more vital and vulnerable witnesses who need to be examined and there is every apprehension that the applicant would influence those witnesses keeping in regard his past conduct.

23. So far as the past conduct of the applicant and the apprehension based on which abovesaid submissions are made, learned SPP submits as under:-

a. In the year 2018, emails were received from the 2 witnesses



about the threats extended to them from the family of the applicant.

- b. 4 calls admittedly were made from the Dasna jail where the applicant is lodged, directly to the PW-7 and 3 calls to PW-14 in the same fashion. Subsequent thereto, both witnesses have turned hostile. The importance of these witnesses was to the extent that the applicant is stated to have made an extra judicial confession to both the said witnesses who were to prove the same.
- c. The influence/threat can be inferred from the fact that the last call to PW-14 was made on 21.10.2022 and resultantly on 22.10.2022, PW-14 turned hostile.

24. Learned SPP finally submits that the fact that the calls were indeed made from Dasna Jail to PW-7 & PW-14 have been ascertained and found to be genuine. On that basis, learned SPP vehemently submits that the connection between the calls made and the PWs turning hostile appears to be a possibility which would disentitle the applicant from seeking bail.

ANALYSIS AND DECISION:

25. This Court has heard the arguments of Ms. Bhandari, learned counsel for the applicant as also Mr. Nikhil Goel, learned SPP for the CBI. The statements of witnesses and other relevant documents have also been carefully perused.

26. It is undoubted that the applicant has been incarcerated for almost 6 years 2 months by now according to the Nominal Roll. That apart, the



applicant also has other cases pending against him and has undergone sentences in some cases, though most of the cases are for offences under section 138 NI Act, 1881. The applicant is also facing charges under section 3 and 4 of the Gangster Act, 1986 apart from the present case.

27. That the case of the prosecution is built upon the version that since the applicant has been facing acute financial crisis, he conspired with the other co-accused persons to loot the vehicle and tide over the extreme financial crisis by selling the said vehicle. It is the version of the prosecution that in order to execute such plan, the applicant and others committed the said offence in open in broad daylight. It is stated that the car which was used for committing the offence admittedly belonged to the applicant; that it was the applicant who fired the shots at the deceased, though the gun belonged to another co-accused Pankaj (since deceased); that the eye witness had correctly identified the applicant and pointed out that it was the applicant alone who had fired the fatal shots and that the empty cartridges were recovered at the instance of the applicant from his own house.

28. Ms. Bhandari, learned counsel for the applicant had taken this Court through the statements and cross examination of PW-5 and PW-7 to point out the contradictions which were elicited from the eye witness-PW-5 and the fact that PW-7 had turned hostile and did not support the case of the prosecution. The submission thereon of Ms. Bhandari was that there are major contradictions in the version of PW-5, who stated that he identified the applicant as an occupant of the car, which is incorrect. She had also emphasized that admittedly, PW-5 had jumped out of the car as soon as the shooting began and thus could not have



seen as to who had fired the shots at all, to submit that the witness is speaking falsehood and his statement cannot be trusted.

29. Ms.Bhandari, learned counsel also pointed out that the applicant and another co-accused, namely, Pankaj (since deceased) bore striking physical resemblance apart from carrying the identical tattoo mark on their left arm and thus, there is any amount of doubt as to whether the PW-5 saw the applicant or the deceased co-accused Pankaj at the time of alleged incident. According to her, in such a case, benefit of doubt ought to be in favour of the applicant.

30. Ms. Bhandari also submitted that there is a CCTV footage near the place of occurrence according to which, the applicant is stated to have alighted from his own car at 3.57 P.M. just before the incident and therefore, there is every likelihood that PW-5 may have seen deceased Pankaj and not the applicant.

31. Regarding PW-7, Ms. Bhandari submits that the witness has turned hostile and therefore, keeping in view the above submissions regarding PW-5 coupled with the PW-7 turning hostile, she submits that the applicant surely deserves to be released on bail.

32. Ms. Bhandari also attacked the recovery of the used cartridges on the ground that it is highly suspicious and unimaginable that any prudent person who had committed a ghastly crime would keep the evidence at his house, particularly, when the applicant was admittedly arrested 2 years after the crime was committed. She submits that the said recovery is totally false and apparently, planted. On this ground too, she submits that the applicant deserves to be enlarged on bail.



33. On a holistic perusal of the records so placed and consideration of the arguments, this Court is unable to agree with the contentions of Ms. Bhandari.

34. So far as the issue with respect to the contradictions pointed out by the applicant is concerned, *prima facie*, the same do not appear to be demolishing the case of the prosecution as PW-5 has correctly identified the applicant as one of the offenders and has supported, on material particulars, his eye witness account for the prosecution. Infact, the bullet which PW-5 claims was shot at him by the applicant and missed as PW-5 ducked, was stuck and recovered from the back rest of the front left seat of the *Fortuner* vehicle, which affirms his version.

35. That apart, the PW-5 being confused as to the identity of the person who fired the fatal shots is concerned, it may have some bearing, however, PW-5 appears to have stuck to his case during cross examination. It does not appear appropriate to this Court to make any comment on this issue lest it prejudices the case of either of the parties.

36. So far as PW-7 turning hostile is concerned, the same may be an instance which the applicant may take advantage of at the time of final arguments, however, so far as the present bail application is concerned, PW-5's account also needs to be considered by this Court specially since he is alleged to be the eye witness.

37. The argument regarding CCTV footage showing the applicant alighting from his own car is concerned, no such evidence has been placed before this Court to support the said contentions. However, that too in view of the above statement of the eye witness, the said



submission may not be the clincher.

38. In regard to the theory as put up by the learned counsel for the applicant on the recovery of the cartridges is concerned, though it may have bearing on the final arguments, that by itself does not seem to be enough for this Court to find favour with the applicant at this stage.

39. It is also not disputed that the applicant along with other co-accused persons were not found by the local UP Police for almost 2 years and it was only after the case was transferred to the CBI that its officers were able to arrest them, raises a strong presumption against the applicant under Section 437(1) of Cr.P.C.,1973.

40. As regards the identification is concerned, it is stated that the witness had correctly identified the applicant not only in the TIP proceedings but also in the Court while evidence was being recorded.

41. In addition to the above, even the conduct of the applicant while in judicial custody gains significance while considering his bail application. The fact that the applicant had indeed made calls to PW-7 and PW-14 has not been denied. Moreover, it is too much of a coincidence that out of the 3 calls made to PW-14, the last call from Dasna Jail was made on 21.10.2022 and PW-14 was examined on the very next day, i.e., 22.10.2022 when he suddenly turned hostile. As of now, this gains great significance.

42. That apart, according to the prosecution, 4 calls were made to the PW-7 during the period when he was being examined and he too turned hostile after some time. This too cannot be a mere coincidence. What is important is not the pre-existing relation between the applicant and PW-



7 (stated to be friends), but the mere fact that the friend was named as a witness, is enough to create doubt as to why such calls were made in the first place. There is no way any Court can ascertain as to whether the calls were innocuous, however, it would definitely construe this circumstance against the applicant. Tampering with evidence or threatening witnesses can definitely not be taken lightly by Courts as the same tend to interfere with the administration and delivery of justice.

43. In view of the above, this Court is unable to bring itself to agree with the contentions of the applicant and accordingly, the present bail application along with pending application is dismissed.

44. Needless to observe that none of the observations made above shall tantamount to expression on merits of the case and shall be eschewed from consideration by the Trial Court.

TUSHAR RAO GEDELA, J.

SEPTEMBER 13, 2023/lr