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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 295/2024

BADSHAH @ SHAUKEEN

..... Petitioner

Through: Mr. Shrey Sharawat and Ms. Ishita
Misra, Advocates.

Versus

STATE

..... Respondent

Through: Mr. Laksh Khanna, APP for State
with Insp. Lokender and SI Vivek,
P.S. Neb Sarai.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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10.04.2024

1. By way of present bail application filed under Section 439 Cr.P.C., the applicant seeks regular bail in FIR No. 359/2018 registered under Sections 302/307/120B/34 IPC and Sections 25/27/54/59 of the Arms Act at P.S. Neb Sarai.
2. Learned counsel for the applicant submits that present case relates to an incident dated 07.08.2018, pursuant to which FIR was registered on the statement of one *Taufiq*, who stated that on the said date, his brother-in-law namely *Sabir @ Bada Abid* was killed on account of injuries suffered by a gunshot as well as stabbing. It is submitted that present applicant came to be arrested on 29.10.2018. He further submits that prosecution have cited total 4 eye witnesses and all of them have been examined. In their testimony, the



eye witnesses have neither identified the applicant nor assigned any role to him. It is further submitted that other two witnesses namely *Seema* and *Ikramuddin*, though have attributed the role of causing gunshot injuries to the deceased on his finger, to the present applicant however, the same is an improvement from their initial statement recorded under Section 161 Cr.P.C., wherein no statement was made to the aforesaid effect. It is further submitted that *Ikramuddin* and *Seema* are related and interested witnesses. It is further submitted that prosecution had cited a total of 55 witnesses out of which 39 have been examined till date and the remaining witnesses to be examined are only police witnesses. Lastly, it is submitted that applicant is not involved in any other case.

3. Learned APP for the State, on the other hand, has opposed the bail application. He submits that both *Ikramuddin* and *Seema* have stated that they were in their house, when the incident occurred outside their house and they were witness to the said incident wherein they had seen the applicant taking part in the commission of crime. Learned APP, on instructions, submits that charge has been framed under Section 149 alongwith Sections 301/302/307/120B/147/148 IPC and that act of one accused has to be read as acts of all other accused persons.

4. I have heard the learned counsels for the parties and have also gone through the material placed on record.

5. As noted above, all four eye witnesses have not supported the prosecution case. A perusal of statement of *Ikramuddin* would show that he had submitted CCTV footage of the incident. On a specific query as to whether applicant is seen in the CCTV footage, learned APP for the State, on instructions, has answered the same in negative. He, on instructions,



further states that no other material witness remains to be examined.

6. Considering the fact that all four eye witnesses have turned hostile and that the evidentiary value of the testimony of *Ikramuddin* and *Seema* in light of the alleged improvements will be tested during trial as well as considering the period of custody, it is directed that the applicant be released on regular bail subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty M.M. and subject to the following further conditions:-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
- ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
- iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
- iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
- v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

7. The bail application is disposed of in the above terms.

8. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.

9. Copy of the order be uploaded on the website forthwith.



10. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

APRIL 10, 2024
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