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

+ **BAIL APPLN. 565/2023**

VIKRANT SAGAR

..... Petitioner

Through: Mr. Anil Basoya, Mr. Rohit Lohia &
Mr. Akash, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Ashneet Singh, APP for the State
with Insp. Satbir Singh, P.S. Subzi
Mandi.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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08.01.2024

1. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR No. 303/2014, under Sections 302/307/34/120B of the IPC and Sections 25/27 of the Arms Act, registered at P.S. Subzi Mandi.
2. The case of the prosecution, as per status report dated 23.03.2023, authored by SHO, P.S. Subzi Mandi, is as under:

“Most respectfully it is submitted that Case FIR No. 303/2014, u/s 302/34/120 B IPC 25 & 27 Arms Act, P.S. Subzi Mandi, Delhi was registered the statement of complainant Sh. Kamal Kumar @ Sonu S/o Ram Prakash, wherein he stated that on 25.06.2014, he was enjoying party at Subzi Mandi Railway Station, near Deenanath Road along with Harish, Kamal, Rajeev @ Bunty, Sonu @ Pehlwan, Lala & and Giriraj (servant of Kamal). At about 09:30 10:00 PM accused persons Karan, Sunil @ Kalu, Dipesh, Bola, Sunny @ Rakesh @ Sanjay, and Surender arrived at spot and started abusing Lala. Rajeev @ Bunty and Sonu Pehlwan objected the same on this all the accused persons got angry and threatened them to remain at the same place. Rajeev @ Bunty



pacified the matter and all the accused persons went from the spot. At about 11:00 -11:15 P.M. they went to empty land outside Subzi Mandi Railway Station and enjoying party meanwhile accused persons sunny @ Rakesh @ Sanjay, Bhola, Surender, Dipesh and Vikrant along with other 5-6 persons again arrived at the spot in two cars i.e. Scorpio & Accent. That accused Sunil Kau, Varun Bhardwaj, Surender and Karan were carrying pistols, whereas other accused namely Vikrant Sagar, Sunil @ Maya, Ravi Dhika and other were carrying rods and knife at the time of incident. After entering the gate Sunil@ Kalu made a fire in air. Thereafter Bhola assaulted Kamal with stick and rod on his head and legs with the intention to kill. Thereafter SunilKalu fired on the leg of Sonu Pehalwan. Bhola, Surender, Dipesh and others instigated him to kill. Rajiv @ Bunty moved towards Sunny @ Rakesh @ Sanjay meanwhile Sunny@ Rakesh @ Sanjay took the pistol from the hand of one assailant and fired upon the neck of Rajiv@ Bunty. Sonu Pehalwan tried to get up meanwhile Sunil @ Kalu fired upon the neck of Sonu @ Pehalwan. Giriraj moved towards them and they all assaulted him with fists & leg blows first and then Karan fired upon Giriraj on his hip. Thereafter all accused persons ran away from spot. The injured were shifted to St. Stephens' Hospital where Rajeev@ Bunty was declared brought dead, whereas Sonu Pahalwan @ Tarun Maggo @ Sonu Maggo and Giriraj got gunshot injuries. Kamal was also got admitted.”

3. Learned counsel appearing on behalf of the applicant submits that the eye-witnesses in the present case, i.e., PW-1, 2, 3, 4 and 24 have already been examined. It is further submitted that the role ascribed by PW-1 to the present applicant is of “exhortation”. It is pointed out that no recovery was effected from the present applicant and even in the testimony recorded, no overt act with respect to any injuries has been ascribed to the present applicant. It is further submitted that as per the testimony, the case of the prosecution is that the present applicant was present at the spot alongwith other co-accused persons on the date of the incident. It is further submitted that the present applicant has been in judicial custody since 12.11.2014 and out of 42 witnesses cited by the prosecution, 34 have been examined. It is



further pointed out that two other co-accused persons, namely, Surender and Dipesh, who had absconded have now been arrested and therefore, the witnesses will be re-examined and the trial is likely to take a long time to conclude. It is further pointed out that the present applicant has been released on interim bail on 04 occasions, he did not misuse the liberty granted to him and duly surrendered on time.

4. *Per contra*, learned APP for the State, on instructions of the Investigating Officer submits that the presence of the present applicant at the sport has been established by the prosecution witnesses as mentioned hereinabove. It is submitted that the offence is serious in nature and therefore the present application may be dismissed.

5. Heard learned counsel appearing on behalf of the parties and perused the record.

6. As per testimony of PW-1, the role of the present applicant is of 'exhortation'. It is a matter of record that the present applicant was arrested on 12.11.2014 and has been in judicial custody since then. Nominal roll dated 22.03.2023, received from the concerned Jail Superintendent reflects that the present applicant has already undergone judicial custody of 07 years 07 months and 25 days. It further reflects that the present applicant has been granted interim bail on 04 occasions and he duly surrendered in time. On a pointed query, on instruction of the Investigating Officer, learned APP for the State submitted that there is no previous involvement of the present applicant.

7. In totality of the facts and circumstances of the case, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with two sureties of like amount,



one of which shall be a family member, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave NCT of Delhi without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
8. The application is allowed and disposed of accordingly.
 9. Pending application, if any, also stand disposed of.
 10. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
 11. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
 12. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

JANUARY 8, 2024/bsr