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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19.03.2024
Pronounced on: 28.03.2024

+ **BAIL APPLN. 2211/2022 & CRL.M.As. 34090/2023 & 34091/2023**

BANADIK Applicant
Through: Mr.Manendra Mishra &
Mr.Vikrant Pratap Singh, Adv.
versus

STATE Respondent
Through: Mr.Aman Usman, APP.
Insp. Gurnam Singh.

+ **BAIL APPLN. 621/2023**

MOHD DANISH Applicant
Through: Mr.M.L. Yadav & Mr.Harish
Chand, Adv.
versus

THE STATE Respondent
Through: Mr.Aman Usman, APP.
Insp. Gurnam Singh.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. These Bail Applications have been filed by the Applicant(s) under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') read with Section 482 of the Cr.P.C., praying for the Applicant(s) to be released on Bail in FIR No. 191/2021 registered at



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Police Station: Bara Hindu Rao, North, Delhi, originally under Sections 302/307/120B/34 of the Indian Penal Code, 1860 (in short, 'IPC') and Sections 25/27/54/59 of the Arms Act, 1959 (in short, 'Arms Act').

Brief Facts

2. It is the case of the prosecution that on 08.07.2021, at about 9:15 PM, a group of persons stopped the car of the complainant, namely, Naeem Ahemad, and started quarrelling with him and his nephew, Muneeb. However, they were over powered by the complainant with the help of the passersby, and they managed to get away. After a few minutes, the attackers returned and fired gunshots, resulting in bullet injuries to two innocent passersby in the crowd. Both the injured were taken to the hospital where they were declared as brought dead.

3. The prosecution further alleges that during the investigation, it was found that there were disputes between Mohd. Muneeb and accused Danish, who is the applicant in Bail Appln. 621/2023, and Firojuddin, a co-accused. Mohd. Muneeb had earlier also made a complaint against the construction raised by the applicant- Mohd. Danish and Firojuddin, and also filed a petition before this Court alleging unauthorized construction being carried out by them. The prosecution alleges that the accused, Firojuddin, in conspiracy with his father-in-law-Mehtabuddin, and Mohd. Danish, called Mohd. Muneeb on his mobile and threatened him to settle the matter, otherwise, to face the dire consequences. However, as the matter was



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not resolved, Firojuddin, who was in touch with the co-accused Ravi Sharma and Shoaib through one Anwar @ Hathela, who is alleged to be running a racket from Tihar Jail, along with the other co-accused, assembled near the Masjid in front of Kishan Ganj Railway Station, and conspired to kill Mohd. Muneeb. Accused Firojuddin and Mohd. Danish, along with hired criminals, that is, co-accused Ravi Sharma, Rahul @ Charlie, Himanshu @ Rohan, Shoaib, Sharafat, Banadik @ Sunny/applicant in Bail Appln. 2211/2022, and Satender, assembled near the Masjid in front of Kishan Ganj Railway Station, consumed alcohol, and, thereafter, as per the plan, Rahul @ Charlie went to Sanjita Hospital to identify Muneeb. After identification, Rahul @ Charlie stopped the car of Muneeb, and along with Himanshu @ Rohan, Ravi Sharma, Shoaib, Satender, Banadik @ Sunny/the applicant herein, and Sharafat, attacked on Mohd. Muneeb, while Firojuddin and Danish were standing near the place of the incident. Rahul @ Charlie fired upon Mohd. Muneeb with an intention to kill him, however, two passersby died due to the bullet injuries. Thereafter, all the accused persons ran away from the spot.

4. The prosecution alleges that a pistol and two live cartridges were later recovered from the possession of accused Banadik @ Sunny/the applicant herein. A mobile phone was also seized.

5. The prosecution alleges that during the investigation, it was found that Banadik @ Sunny has made 158 calls with the co-accused Satender during the period 05.06.2021 to 08.07.2021; with Shoaib around 66 calls from 11.06.2021; and with co-accused Sharafat 2 (two) calls from 09.07.2021. It is alleged that this also shows



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conspiracy amongst the co-accused.

6. It is further alleged that there is a voice message between Sohaib and Firojuddin. The ballistic report with respect to the weapon recovered from Rahul @ Charlie has been received as positive.

7. Based on the above, charge-sheet has also been filed.

Submissions by the learned counsels for the applicants

8. The learned counsels for the applicants submit that though the entire case of the prosecution is based on an allegation that Mohd. Danish had an enmity with Muneeb and was present at the spot, none of the eyewitnesses have deposed to the presence of the accused Mohd. Danish at the spot.

9. They further submit that as far as Banadik @ Sunny is concerned, he has no association with Mohd. Danish or Firojuddin. He has been implicated only on the basis of his call records, and alleged conversations with the co-accused Satender, Sohaib, and Sharafat. These calls were from a period much prior to the date of the alleged hatching of the conspiracy, and clearly show that they were known to each other even prior to the alleged conspiracy being hatched. They further submit that, in any case, the Call Data Records (CDRs) cannot act as a proof of any alleged conspiracy.

10. They further submit that the applicants are not seen in the CCTV footage that the prosecution relies upon.

11. They submit that the applicants have been in custody since 13.07.2021 and have clean antecedents.

12. The learned counsel for Banadik @ Sunny submits that, as far



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this applicant is concerned, though he was also named in FIR No.187/2021 registered with Police Station: Special Cell under Sections 186/353/30 of the IPC and Sections 25/27 of the Arms Act, in custody of which case he is supposed to have made the alleged disclosures, he has been granted bail in the said case.

Submissions by the learned APP

13. On the other hand, the learned APP, while admitting, on instructions from the IO, that the applicants are not seen in the CCTV footage being relied upon by the prosecution, submits that, in the present case, there are other material available to corroborate the version of the prosecution, in form of statements of various witnesses, which establishes the enmity between Mohd. Danish and Muneeb, the actual targets.

14. The learned APP, through a chart, tried to show the connection between Mohd. Danish and the other co-accused. He submits that they were all in contact with each other around the time of the incident, and this itself shows how the conspiracy was planned and then executed.

15. He further submits that Mohd. Danish has also been accused of threatening a witness while the applicant-Mohd. Danish was out on *interim* bail, due to which, vide an order dated 09.02.2023 passed by this Court in W.P.(Crl) 385/2023, ***Mohd. Muneeb v. State***, protection has been granted to the said witness in the form of personal security to Mohd. Muneeb. He submits that vide judgment dated 02.03.2023 passed in Bail Appln. 644/2023, titled ***Mohd.Danish v. State of NCT of Delhi***, the application filed by the applicant-Mohd.Danish seeking



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extension of *interim* bail granted to him, was also dismissed.

Analysis and findings

16. I have considered the submissions made by the learned counsels for the parties.

17. From the above, it is apparent that both the applicants are not seen in the CCTV footage of the incident. As far as the accused Mohd. Danish is concerned, though he was known to the eye-witnesses, they have stated that he was not present at the spot.

18. The entire story of the prosecution hinges on the alleged CDRs, which show conversation between the co-accused. The relevance of the CDRs to bring home the accusations against the applicants, shall be considered by the learned Trial Court once the evidence is completed. Reference in this regard can be had to the judgement of the Supreme Court in ***State (By NCB) Bengaluru v. Pallulabid Ahmad Arimutta & Anr.***, (2022) 12 SCC 633, wherein it was held as under:

“12. ...The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial...”

19. The applicants have been in custody since 13.07.2021, and even charges have not been framed till date. It is to be borne in mind that long period of incarceration militates the most important right as conferred by Article 21 of the Constitution of India.

20. It is not stated that the applicants are flight risk. It needs no emphasis that the purpose of keeping the accused in custody is to ensure the presence of the accused at the trial. The object of custody is



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neither punitive nor preventive in nature. In this regard, reference is made to the judgement of the Supreme Court in ***Sanjay Chandra v. Central Bureau of Investigation***, (2012) 1 SCC 40, wherein it was opined as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

21. As far as the submission of the learned APP that the applicant-Mohd. Danish has earlier threatened the witness-Muneeb, and his reliance on the orders dated 09.02.2023 and 02.03.2023, are



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concerned, it is to be noted that the applicant-Mohd.Danish has remained in custody for more than one year thereafter. The applicants cannot be made to face further incarceration while trial is not proceeding. Adequate safeguard is being place in the present order for ensuring that the applicant does not misuse his liberty and, if he does so, the prosecution is not powerless and can move appropriate application seeking cancellation of the bail granted to him.

22. Keeping in view the above circumstances, the applicants are granted bail in FIR No.191/2021 registered at Police Station: Bara Hindu Rao originally under Sections 302/307/120B/34 of the IPC and Sections 25/27/54/59 of the Arms Act, on furnishing personal bond(s) in the sum of Rs.50,000/- (each) with one local surety each of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant(s) will not leave the country without the prior permission of the learned Trial Court.
- ii. The Applicant(s) shall provide his permanent address to the learned Trial Court. The Applicant(s) shall also intimate the Court, by way of an affidavit, and to the Investigating Officer (IO) regarding any change in his residential address.
- iii. The Applicant(s) shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The Applicant(s) shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant(s) in a working condition at all times and shall not be switched off or changed by him without prior intimation to the



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learned Trial Court and the IO concerned. The mobile location be kept on at all times.

v. The Applicant(s) shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses, or tamper with the evidence of the case while being released on Bail.

vi. In case the Applicant(s) is found involved in another case or in any manner misuses his liberty, it will be open to the prosecution to file an appropriate application seeking cancellation of his Bail in the present case as well.

23. Needless to state, any observation touching upon 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 the merits of the matter.

24. The Bail Applications are disposed of in the above terms. Pending application is also disposed of being infructuous.

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

NAVIN CHAWLA, J

MARCH 28, 2024/rv/RP

Click here to check corrigendum, if any