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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 690/2023 & CRL.M.A. 13122/2024, CRL.M.A. 13261/2024, CRL.M.A. 17378/2024, CRL.M.A. 17379/2024

SAHIL @ PRADEEP TOMARPetitioner
Through: Mr. Hirein Sharma with Mr. Vimal Tyagi, Mr. Akshay Rathi and Mr. Saurabh Goel, Advocates.

versus

STATE (GOVT OF NCT, DELHI)Respondent
Through: Mr. Utkarsh, APP for the State with Insp. Sandeep, P.S.: Ranhola.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
04.09.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No.499/2018 dated 28.07.2018 registered under sections 302/34 of the Indian Penal Code, 1860 ('IPC') and sections 25/27 of the Arms Act, 1959 ('Arms Act') at P.S.: Ranhola, Delhi. Consequent upon completion of investigation, the offence under section 174-A of the IPC was added to the matter.

2. Notice on this petition was issued on 02.03.2023.
3. Status Reports dated 'nil' and 21.11.2023 have been filed in the matter.
4. Nominal Roll dated 25.04.2023 has also been received from the Jail Superintendent.



5. Mr. Hirein Sharma, learned counsel appearing for petitioner submits, that a perusal of the record would show, that the petitioner has been implicated in the case based on his purported identification by the father of one Sunil Punia in his statement recorded under section 161 Cr.P.C., in which statement however the father only says that 02 out of the 04 boys spotted by him in a certain CCTV-footage *appear to resemble* Sunil Punia and the petitioner. Interestingly however, it is argued, that the father is not listed as a prosecution witness in the case. Furthermore, counsel submits, that the prosecution has also alleged that a country-made loaded pistol and 03 live cartridges were recovered at the petitioner's instance on the basis of his own disclosure statement.
6. Furthermore, it is submitted that the prosecution alleges that empty cartridges recovered from the crime scene have been connected with the pistol alleged to have been recovered at the petitioner's instance.
7. Learned counsel submits however, that it is significant to note that the complainant, who claims to be the eye-witness to the incident; and who has deposed as PW-3 before the learned trial court has turned hostile insofar as identifying the petitioner is concerned.
8. Mr. Sharma argues, that in this backdrop the petitioner has been in custody since the date of his arrest *i.e.*, 01.08.2018 and in judicial custody since 07.08.2018, without ever having availed any interim bail or other similar relief. Accordingly, it is submitted that the petitioner has already been in custody for about the last 06 years and deserves to be enlarged on bail.



9. On the other hand, opposing the grant of bail, Mr. Utkarsh, learned APP appearing for the State submits, that the petitioner was one of the persons who had chased-down the deceased, Rajender Goel, and he can be seen to be doing so in the CCTV-footage collected in the course of investigation.
10. Learned APP also submits, that the recovery of the pistol and the FSL report which purportedly connects the empty cartridges recovered from the crime scene with the said pistol, are clearly incriminating pieces of evidence available against the petitioner.
11. Besides, learned APP submits, that as is reflected in Nominal Roll dated 25.04.2023, the petitioner is also implicated in another case bearing FIR No.835/2015 dated 07.12.2015 registered under sections 302 of the IPC and sections 25/27 of the Arms Act at P.S.: Mianwali Nagar (West), Delhi. He submits that the petitioner's overall jail conduct has also been 'un-satisfactory' and he has been awarded multiple prison punishments.
12. *Vide* order dated 12.08.2024, this court had directed that a legal aid counsel be appointed to represent the complainant, who has also been heard in the matter.
13. Mr. Kunal Malhotra, learned counsel appearing for the complainant on an earlier date, on instructions of the complainant who was present in court, had confirmed that the complainant has not confirmed the identity of the present petitioner in his court deposition; and has, to that extent resiled from his earlier statement made in the course of investigation.



14. Upon an overall conspectus of the facts and circumstances of the case, as borne-out from the material on record, the considerations that weigh with the court, at this stage, are following :
- 14.1. Admittedly, the petitioner has been implicated in the matter based on a section 161 Cr.P.C. statement of a person who has *not been arrayed* as a prosecution witness in the matter; and based on the alleged recovery of a pistol with some live cartridges at the petitioner's instance, on the basis of his own disclosure statement, which the prosecution alleges co-relates with the empty cartridges found at the crime scene.
- 14.2. The nominal roll also shows that the petitioner has been in continuous judicial custody since 07.08.2018 *i.e.*, for more than 06 years without any respite. Though the petitioner's jail conduct is stated to be 'un-satisfactory' and he has received several prison punishments, he has obviously atoned for those prison offences by way of the punishments awarded to him in jail.
- 14.3. Most importantly, the complainant, who claims to be the eye-witness to the incident, has turned hostile in his court deposition insofar as identifying the petitioner is concerned.
15. In the above view of the matter, this court is persuaded to grant to the petitioner – **Sahil @ Pradeep Tomer s/o Rohtash Tomer** – *regular bail* pending trial, subject to the following conditions :
- 15.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 02 local



sureties in the like amount from family members, to the satisfaction of the learned trial court;

- 15.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 15.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 15.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
- 15.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer.
- 15.6. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of bail.
16. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
17. The petition stands disposed-of in the above terms.
18. Other pending applications, if any, are also disposed-of.



19. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 4, 2024

V.Rawat