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

+ **BAIL APPLN. 656/2024**

HARISH@JANU

..... Applicant

Through: Mr. Gaurav Kochar & Mr.
Bharat Sharma, Advs.

versus

THE STATE GOVT. OF NCT
OF DELHI

..... Respondent

Through: Mr. Utkarsh, APP for the
State
Inspector Sunil Kumar,
PS- Gulabi Bagh

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
19.03.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in FIR No. 268/2020 dated 11.12.2020, registered at Police Station Gulabi Bagh for offences punishable under Section 302 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959. The chargesheet is filed against the applicant for offences under Sections 302/392/395/412/120B/34 of the IPC and Sections 25/27 of the Arms Act, 1959.

2. It is alleged that on 11.12.2020, a PCR call was received that the victim with a bullet injury is lying near the Metro Pillar No. 142, Pratap Nagar. On being taken to the hospital, the victim was declared 'brought dead'.

3. On perusal of the CCTV footage, it was found that four assailants were allegedly chasing the deceased victim. One of the

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said motorcycles was traced and was found to be registered in the name of one, Pushpa. During the course of investigation, Pushpa was questioned, who disclosed that the said bike was driven by the applicant (Pushpa's brother-in-law). Pursuant to the same, the applicant was arrested on 14.12.2020. On being interrogated, the applicant allegedly disclosed that the accused persons had conspired to rob the victim. He disclosed that he along with three other assailants had followed the victim on two motorcycles.

4. He disclosed that he was riding one of the motorcycles with co-accused Gaurav as the pillion rider, and co-accused Vikas *alias* Vicky was riding the other motorcycle with co-accused Lokesh as the pillion rider. He further disclosed that the accused persons on the motorcycles had tried to snatch the bag from the victim. He disclosed that co-accused Gaurav *alias* Gori allegedly shot the victim when he resisted. The said co-accused persons were arrested on the basis of the disclosure statement of the applicant.

5. During investigation, co-accused persons, namely, Sumit and Ishwar were also arrested. It is alleged that the said co-accused persons had intimated the assailants about the victim's location.

6. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.

7. He submits that the applicant is not seen in the CCTV footage and the sole eye witness of the alleged incident has also failed to identify the applicant. He submits that the CCTV footage does not show the incident of firing of the gun shot.

8. He submits that the pistol allegedly used in the commission of the crime is falsely shown as having been recovered from the applicant. He submits that the same was

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planted on the applicant.

9. He further submits that the chargesheet has already been filed. The applicant is under incarceration since 14.12.2020.

10. He submits that co-accused persons, that is, Ishwar and Sumit, have been granted bail by this Court by orders dated 09.05.2023 and 30.11.2023 respectively. He further submits that co-accused Gaurav *alias* Gori was granted bail by this Court *vide* order dated 01.02.2024.

11. The learned Additional Public Prosecutor for the State submits that the applicant is involved in a heinous crime of murder and the evidence collected thus far supports the case of prosecution. He submits that the applicant is the main conspirator in the entire case and was actively involved in the commission of the crime.

12. He submits that one of the motorcycles used in the commission of the crime, which is even visible in the CCTV camera at the place of incidence, was also recovered from the house of the applicant and is registered in the name of his sister-in-law.

13. He further submits that the applicant has been previously convicted in FIR No. 314/2017 for the offences under Sections 25 of the Arms Act, 1959. The nominal roll indicates that the applicant has already undergone the sentence for the same.

14. I have heard the learned counsel for the parties.

15. It is settled law that the Court cannot conduct a mini trial at the time of considering an application for bail. However, for the limited purpose of ascertaining if there exists a *prima facie* case in favour of the applicant warranting grant of bail, the material can be looked into for indicating the reasons thereof.

The Hon'ble Supreme Court in ***Lt. Col. Prasad Shrikant Purohit***
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v. State of Maharashtra : (2018) 11 SCC 458, held as under:

“29. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.”

16. The case of the prosecution is that on analysis of the CCTV footage, it was found that four assailants were chasing the deceased victim on two motorcycles. The accused persons were identified when one of the motorcycles, found to be driven in suspicious circumstances was captured in the CCTV footage and found to be registered in the name of the applicant's sister-in-law. The said motorcycle was found at the house of the applicant. It is stated that the same was used by the applicant. The pistol allegedly used in the commission of the crime was allegedly recovered at the instance of the applicant. On being asked, it is submitted by the learned Additional Public Prosecutor for the State, on instructions from the Investigating Officer, that the FSL Report in regard to the said pistol, is still pending.

17. In the absence of the FSL Report, at this stage, it cannot be



said that the pistol allegedly recovered at the instance of the applicant was used in the commission of the crime.

18. It is the case of the prosecution that there was a public eye-witness who has seen the incident. It is not denied that the said eye-witness has not identified the applicant. While four individuals have been seen chasing the victim on the CCTV footage, the applicant has not been identified therein.

19. While one of the motorcycles seen in the video was recovered from the house of the applicant, at this stage, there is no material on record to *prima facie* show that it was the applicant who was riding the said motorcycle or that the applicant had any active involvement in the commission of the offence in the absence of the FSL Report. It is for the learned Trial Court to assess the evidentiary value of the recovery of the said motorcycle along with the other evidence at the appropriate stage.

20. It is also relevant to note that the role of the applicant, in any case, is not graver than that of co-accused Gaurav who has already been granted bail by this Court. Today, this Court has also granted bail to co-accused Vikas *alias* Vicky as well, who is alleged to have ridden the other motorcycle.

21. It is trite law that in case the Court finds some doubt as to the genuineness of the prosecution, the accused is entitled for the grant of bail.

22. The applicant is in custody since 14.12.2020 and the investigation in relation to the applicant is already complete. The chargesheet has already been filed in the present case. It is not disputed that trial would take a considerable period of time.

23. Considering the aforesaid facts, I am of the opinion that no useful purpose would be served by keeping the applicant in
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further incarceration.

24. Any apprehension regarding the applicant tampering with the evidence or fleeing from justice if released on bail can be taken care of by putting appropriate conditions.

25. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. He shall not make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. He shall under no circumstances leave the boundaries of Delhi without informing the IO;
- c. He shall appear before the learned Trial Court on every date of hearing;
- d. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- e. He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/SHO.

26. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by seeking cancellation of bail.

27. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

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28. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MARCH 19, 2024
“ssh”