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

+ **BAIL APPLN. 657/2024**

SHAILESH KUMAR Petitioner

Through: Ms. Usha Sharma, Adv.

versus

THE STATE Respondent

Through: Mr. Raghuinder Verma, APP for State
with Insp. Rajnish Kumar PS Sarai
Rohilla

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER
14.03.2024

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1. The present petition has been filed seeking regular bail under Section 439 CrPC in connection with FIR No. 294/2020 under Sections 302/34 IPC read with Sections 25/27 Arms Act registered at Police Station Sarai Rohilla.
2. The case of the prosecution is that on 27.08.2020 the complainant namely Mohd. Mehtab made a complaint that on hearing some commotion, he came out of his house and saw the accused persons having some arguments with the deceased. After that the accused persons caught hold of the hands of the deceased (Talwar) and one of them put a pistol on the temple of the deceased and fired, due to which the deceased fell and died.



3. The learned counsel for the petitioner refers to the chargesheet to contend that gun shot injury has been attributed to the co-accused Mehboob @ Sanu. She further submits that the other two persons to whom the overt act has been attributed are co-accused Nizam and Salman who are stated to have held the hands of the deceased while the co-accused Mehboob @ Sanu had fired from his pistol. She submits that no overt act has been attributed to the present petitioner. It is the case of the prosecution itself that the present petitioner was only present at the place of incident.

4. She submits that the prosecution has cited 02 eye witnesses namely, Mohd. Mehtab who was examined as PW18, as well as, wife of the deceased namely, Asgari Khatoon, who was examined as PW1.

5. She submits that the eye witness Mohd. Mehtba (PW18) has turned hostile. Insofar as the wife of the deceased i.e. Asgari Khatoon (PW1) is concerned, the learned counsel for the petitioner submits that she was introduced as a witness subsequently and she is an interested witness.

6. She further submits that the co-accused Asif, who is similarly situated, has already been admitted to bail by this Court *vide* order dated 05.01.2024 passed in BAIL APPLN. 3223/2023. She submits that the petitioner does not have criminal record. She therefore, urges the Court that the petitioner be also released on bail.

7. *Per contra*, learned APP for the State has argued on the lines of the status report, a copy of which has been handed over in Court today and the same is taken on record.

8. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have perused the material on record.



9. A perusal of the status report shows that no specific role or any overt act has been attributed to the present petitioner.
10. As per the prosecution's version the fatal gun shot injury has been attributed to the co-accused Mehboob @ Sanu. Further, the case of the prosecution is that co-accused Nizam and Salman had held the hands of the deceased while co-accused Mehboob @ Sanu had fired from point blank range.
11. It is also not in dispute that no recovery of weapon has been affected from the present petitioner and the eye witness Mohd. Mehtab (PW18) has also turned hostile and did not support the case of the prosecution.
12. Further, the prosecution has cited total 34 witnesses and till date only 22 witnesses have been examined. Therefore, the conclusion of trial is nowhere in sight.
13. Though the probative value of the evidence and the credibility of the witnesses will be seen at the stage of trial, but the circumstances noted above definitely raises doubt as regard to the complicity of the petitioner and truthfulness of the prosecution's version which furnishes a ground for granting bail to the petitioner.
14. That apart, it is not in dispute that the petitioner has clean antecedents. Further, the petitioner is also a permanent resident of Delhi, therefore, he is not a flight risk. Further, all the material witnesses have been examined, thus, there is no possibility of the petitioner influencing the witnesses in the event he is enlarged on bail.
15. Considering the aforesaid facts and circumstances in entirety, I am of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a



Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall not leave the Delhi/NCR without prior permission of the Court.
- b) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- c) Petitioner shall provide mobile numbers to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

16. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.

17. The present bail petition is disposed of.

18. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

19. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

MARCH 14, 2024

N.S. ASWAL