



\$~16

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

+ **BAIL APPLN. 936/2024**

MEHBOOB @ SANU

..... Petitioner

Through: Mr. Vineet Jain, Adv.

versus

STATE GNCT OF DELHI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

16.05.2024

%

1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.294/2020 under Sections 302/34 IPC and Sections 25/27/54/59 of Arms Act, 1959 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 arguments with the deceased. After that the accused persons fired at the deceased as a result of which deceased expired.
3. The learned counsel for the petitioner submits that the complainant Mohd. Mehtab, who was cited as eye-witness and was examined as PW-18, did not support the case of the prosecution.
4. He submits that the other incriminating circumstances pressed against



the present petitioner are the testimony of the wife of the deceased namely, Ms. Asgari Khatoon, who was examined as PW-1, as well as, the recovery of weapon and live cartridges from the petitioner's residence.

5. In so far as the recovery of the weapon and the live cartridges is concerned, he submits that the same were recovered from the residence of the petitioner after 20 days of the alleged date of incident, despite the fact that the petitioner was arrested on the date of incident i.e., 16.09.2020.

6. He further submits that the testimony of sole eye witness Ms. Asgari Khatoon/PW-1 does not inspire confidence. Elaborating further, he submits that it is the case of the prosecution that the deceased was brought to the hospital by his wife/PW-1, but a perusal of the MLC shows that the PCR Police officials had brought the deceased to the hospital.

7. He submits that the PW-1 during her examination has also testified that she had taken the deceased to the hospital along with her brother-in-law and in the process her clothes got soaked in the blood. However, the said blood soaked clothes were not seized by the police from PW-1.

8. According to the learned counsel, these circumstances goes to show that PW-1 has been subsequently introduced as an eye witness and she was not a witness to the alleged incident.

9. He submits that the petitioner is incarcerated since 16.09.2020 and the custody of the petitioner is no more required as the investigation is complete and the trial is underway, in which the material witnesses have already been examined.

10. It is also the contention of the learned counsel for the petitioner that the petitioner does not have any criminal record.

11. *Per contra*, the learned APP for the State has argued on the lines of



Status Report. He submits that the testimony of PW-1 is supported by medical evidence. Elaborating on his submission, he further submits that the eye witness i.e., PW-1 has specifically stated that the present petitioner is the person, who had fired at the deceased from a point blank range and this fact is also corroborated by the post-mortem report.

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

13. It is not in dispute that the complainant Mohd. Mehtab who was cited as eye-witness and was examined as PW-18 did not support the prosecution case.

14. Though, at the stage of considering the bail application, the probative value of the evidence that has come on record, as well as, the reliability of the witnesses cannot be seen as it is for the trial court to take an ultimate call on the same, however, it cannot be overlooked that it is the case of the prosecution that PW-1 had accompanied the deceased along with her brother-in-law to the hospital but the name of the PW-1 does not find mention in the MLC, rather the MLC reveals that it is the Police officials of the PCR who had brought the deceased to the hospital.

15. Further, it is also recorded in the charge sheet that when the police went to the hospital it did not find any eye witness present there.

16. The contention of the learned counsel for the petitioner that though PW-1 had stated that in the process of taking the deceased to the hospital her clothes got soaked in blood but intriguingly, the said clothes were not seized by the police which creates further doubt about the presence of PW-1 at the place of incident, cannot be negated altogether.

17. The petitioner is stated to be in custody from the date of incident i.e.,



16.09.2020 and his custody is no more required regard being had to the fact that the investigation in the matter is complete, no further recovery is to be made from the petitioner and all material witnesses have been examined.

18. The prosecution has cited 34 witnesses out of which only 23 witnesses have been examined till date, therefore, the conclusion of trial is nowhere in sight and in the given circumstances, the petitioner cannot be kept in custody for an indefinite period to await the outcome of the trial.

19. That apart, it is not in dispute that the petitioner has clean antecedents. It is also not the case of the prosecution that the petitioner is a flight risk.

20. Considering the aforesaid circumstances in entirety, this Court is 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. 20,000/- 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 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 number 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.

21. The petition stands disposed of.



22. 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.
23. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
24. Order *dasti* under signatures of the Court Master.
25. Order be uploaded on the website of this Court.

MAY 16, 2024/dss

VIKAS MAHAJAN, J