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

+ **BAIL APPLN. 947/2024**

SUMAN

..... Petitioner

Through: Mr. Himanshu Saxena, Advocate
(through VC).

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State.
SI Sudheer Kumar, PS NIA.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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15.05.2024

1. The present application is the second application under Section 439 of the Cr.P.C. seeking regular bail in case FIR No. 350/2023, under Sections 395/397/411/34 of the IPC and Sections 25/27 of the Arms Act, registered at P.S. Narela Industrial Area.
2. Status report has been handed up in Court today and the same is taken on record.
3. The case of the prosecution as per the status report authored by Insp. Rajesh Kumar, SHO PS Narela Industrial Area is as under:-

“1. Briefly stated facts of the present case are that present regular bail application U/S 439 CrPC has been filed by the petitioner in case FIR No. 350/23, Dt. 05.04.2023, U/S 395/397/411 IPC & 25/27 Arms Act of PS Narela Indl Area and through the present petition/application.

2. It is stated that on the intervening night of 04 & 05.04.2023 complainant Mohit S/o Sh. Shyam Lal was performing his duty as security guard along with other guards namely Ved Prakash and others at Pocket-6, Sector-G2, Narela, Delhi. During night



checking complainant made a call to his supervisor to give status of night checking upon which his supervisor Amar Singh directed him to come to Pocket-3, Sector-G2, Narela, Delhi as Amar Singh heard some noise and apprehended thieves being there. Thereafter, complainant along with other guard Ved Prakash reached at aforementioned place at about 04:30 AM. When complainant reached at the main gate of the society they saw two boys were standing there and one of them threatened complainant to go from there and also shown a desi kata. Then complainant shouted and tried to gather some public persons upon which the boys carrying desi kata made a fire in air.

3. After that alleged persons tried to fled away from the spot as public persons stared gathering at the spot and the said desi kata fell down at the spot and all alleged persons successfully fled away from the spot. After this a PCR call was made and on the statement of complainant Mohit S/o Shyam Lal got recorded and a case vide FIR No. 350/23, U/s 393 IPC got registered at PS NIA, Delhi and the investigation was entrusted to ASI. Sudheer Kumar, No. 751/OND.

4. During Investigation weapon used during commission of offence was seized and the place of occurrence was also got inspected by District Crime Team. That witnesses were also examined and their respective statements U/s 161 CrPC were also got recorded and during the examination rest of the witnesses stated that there were 05 accused persons who committed the present offence. 02 of them were standing outside and 03 were committing offence. Therefore, the present offence was investigated U/s 395/397 IPC.

5. During further course of investigation initially 02 accused persons namely Suman S/o Md. Ali (present applicant) and Hasan @ Mangal S/o Md. Ali (both are brother) were arrested in FIR No. 954/2022, U/s 395/397/411 IPC of PS NIA, Delhi and they disclosed their respective role in their discloser statements. After that only both the accused persons above were arrested in the present case and were sent to judicial custody. After that 02 more accused persons namely Salauddin @ Mulla @ Sonu S/o Md. Israil and Suraj @Manish S/o Ram Naresh were also arrested in FIR No. 355/2023, U/s 457/380/411/323/34 IPC of PS



NIA, Delhi and they also disclosed their respective role in the present FIR in their discloser statements. After that both the above accused persons were also arrested in the present case and were sent to judicial custody. That judicial TIP of all the 04 accused persons including the present applicant Suman, were got conducted in Tihar/Rohini Jail and all 04 accused persons were correctly identified by the complainant Mohit.

6. That during investigation case property i.e 07 water tap were got recovered from the possession of present applicant Suman and 02 live cartridge were got recovered from the possession of Hasan @Mangal. That all the 04 accused persons are running in judicial custody since 07.04.2023 and are still in custody.

7. During further course of investigation weapon of offence recovered from the spot was sent to FSL, Rohini for examination and result thereof and the same is pending. During investigation all the witnesses were examined in detail and after completion of investigation, charge sheet in the present case was filed before the court and the present case is pending trial before the Hon'ble court of Sh. Dhirender Rana, Special Judge, NDPS, Rohini court. That charge in the present case is not yet been framed and the same is fixed for 01.11.2023. It is further submitted that one of the accused person namely Salman @ Shekhu is still at large. Further it is stated that TIP of all 04 accused person got successfully done and all the 04 accused persons were correctly identified by the complainant.

8. It is pertinent to mention here that TIP of the accused persons in FIR No. 954/22, U/s 395/397/411 IPC got failed and hence the accused persons were admitted to bail in that case which is not applicable in the present case as all the accused persons were correctly identified.

9. In this regard, it is submitted that the Prosecution evidence of complainant is going to be recorded in the court of Sh. Dhirender Rana, LD ASJ, Rohini Courts, Delhi on 21.08.2024.”

4. Learned counsel appearing on behalf of the applicant draws attention of this Court to GD no. 12A dated 05.04.2023, wherein it has been recorded that there was a telephone call from guard at Narela and he stated that 30



boys had barged in to commit theft and had subsequently fired shots and had broken motorcycle. It is submitted that subsequently, the case of the prosecution is that the present applicant alongwith three other co-accused persons had committed theft at the said flat and while escaping from there, it is alleged that they had fired shots in the air. It is submitted that the investigation in the present case stands complete, the chargesheet has been filed and charges have been framed. Furthermore, it is submitted that the complainant was not present at the date fixed for examination before the Learned Trial Court and bailable warrants have been issued for his appearance. It is further submitted that the present applicant is falsely implicated in the present FIR.

5. *Per contra*, learned APP for the State submits that the present applicant alongwith his brother and other associate had committed the offence. It is alleged that the brother of the present applicant, i.e., Hassan @ Mangal, had fired a shot in the air with *desi katta*, which had been recovered from the spot as the same was left while running away. The complainant is to be examined before the learned Trial Court. It is further submitted that the present applicant was found in possession of stolen water-taps and was accordingly charged under Section 411 of the IPC.

6. Heard learned counsels for the parties and perused the record.

7. The present applicant has been arrested in the present FIR on the basis of an alleged disclosure statement by him in another case FIR No. 355/2023, under Sections 475/380/411/323/34 of the IPC, registered at P.S. Narela Industrial Area. The investigation in the present FIR is complete and the chargesheet has been filed. It is also a matter of record that charges in the present case have been framed. As per the Nominal Roll, the applicant has



been in judicial custody since 07.04.2023 and as on 01.05.2024, he has undergone 1 year and 25 days in judicial incarceration.

8. In totality of the facts and circumstances of the case, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with one surety of like amount, to the satisfaction of the Learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave NCT of Delhi without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the Learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
 - vi. The applicant shall report at the concerned police station once in a week, i.e., on every Monday at 04:00 PM and the concerned officer is directed to release him by 04:30 PM after recording his presence and completion of all the necessary formalities.
9. The application is allowed and disposed of accordingly.
10. Pending application(s), if any, also stand disposed of.
11. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observation(s) made are only for the purpose of



the present bail application.

12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

13. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 15, 2024/sn

Click here to check corrigendum, if any