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

+ **BAIL APPLN. 1396/2023**

PRASHANT KUMAR

..... Petitioner

Through: Mr. Kanhaiya Singhal, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Laksh Khanna, APP for State with
SI Akhil

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

23.01.2024

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1. By way of present application filed under Section 439 Cr.P.C. read with Section 482 Cr.P.C., the petitioner/applicant seeks regular bail in FIR No.215/2017 registered under Section 302/120B/34 IPC and Section 27 Arms Act at P.S. Seelampur, Delhi.

2. Learned counsel for the applicant submits that the applicant has been in judicial custody since 28.04.2017 and that all the material witnesses including the two eye-witnesses have been examined. He submits that one of the eye-witnesses namely *Mohd. Salim* has not even identified the present applicant. He further submits that the co-accused namely *Naseem@ Sonu* has already been released on bail and that the applicant is not involved in any other case. He also submits that the only role assigned to the present applicant is that of driving the car in which the main accused i.e., *Pawan Chaudhary* who allegedly shot the deceased had escaped. Lastly, it is



submitted that the applicant was released on interim bail in view of the HPC guidelines and that he did not misuse the concessions granted to him.

3. Learned APP for the State has vehemently opposed the bail application. He submits that the applicant's bail application was rejected by this Court on 24.10.2019 and since then there has been no change in the circumstances. He submits that though one of the eye-witnesses namely *Mohd. Salim* has turned hostile as to the identity of the present applicant however, he has deposed about the presence of the other eye-witness namely *Mohd. Bilal* (PW-2) at the spot, who in turn has identified the present applicant. It is further stated that the applicant has refused to participate in the test identification parade.

4. At this stage, learned counsel for the applicant states that though examination-in-chief of PW-11 was recorded however, he was recalled for cross-examination which was completed on 17.01.2023. In the cross examination, the witness stated that at the time of alleged incident, he was not inside the park.

5. I have heard the learned APP for the State as well as learned counsel for the applicant and have also gone through the material placed on record.

6. The present FIR came to be registered on 24.04.2017 upon the receipt of information from PCR at about 9.45 P.M. about an altercation in Shastri Park, Delhi. Admittedly, the prosecution has examined *Mohd. Salim* and *Mohd. Bilal* being the eye-witnesses, to prove the case against the present applicant besides other material witnesses. As per the prosecution case, present applicant has not taken any active part in the alleged offence except driving the car in which the main assailant escaped after committing the incident. The present applicant has been in judicial custody since 28.04.2017



and was earlier released on interim bail. The applicant is also not found involved in any other case.

7. Keeping in view the aforesaid facts and circumstances including the fact that the applicant has been in custody since 28.04.2017 as well as the fact that the applicant is not involved in any other case as also the fact that all the material witnesses have been examined and that the co-accused has already been released on bail, the applicant is directed to be released on regular bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety of like amount to the satisfaction of the concerned Jail Superintendent/Duty M.M./Trial Court and subject to the following further conditions:-

- (i) The applicant shall not leave the NCT of Delhi without prior permission of the concerned Court.
- (ii) At the time of furnishing bail bond, the applicant shall provide the mobile number, which he undertakes to keep operational at all times during the pendency of the trial.
- (iii) In case of change of residential address or contact details, the petitioner shall promptly inform the same to the concerned IO as well as to the concerned Court.
- (iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
- (v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

8. The application stands disposed of in the above terms.

9. Copy of this order be communicated electronically to the concerned



Jail Superintendent for information.

10. Copy of this order be uploaded on the website forthwith.

11. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the observations are only for the purpose of the disposal of the present application.

MANOJ KUMAR OHRI, J

JANUARY 23, 2024

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