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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1077/2024

RAVINDER RATHI @ AKASH @ NITUPetitioner

Through: Mr. Vineet Jain, Advocate.

versus

STATE

.....Respondent

Through: Mr. Manoj Pant, APP for the State
with Mr. Chittaranjan Hati, Mr.
Dhruv Goyal, Ms. Ananya Kar
Sanghi and Mr. Mahanand Joshi,
Advocates with Inspector Karuna
Sagar and Inspector L. Chand, P.S.:
Tilak Nagar.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

18.07.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No.486/2013 dated 30.09.2013 registered under sections 307/34 of the Indian Penal Code, 1860 ('IPC') at P.S.: Tilak Nagar, New Delhi. Consequent upon completion of investigation, *vide* chargesheet dated 01.02.2014, the charges against the petitioner were modified to sections 302/201/120-B/34 IPC and sections 25/27/54/59 of the Arms Act, 1959 ('Arms Act').

2. Notice on this petition was issued on 28.03.2024. Though the matter was subsequently listed on 15.05.2024, status report has still not been filed on behalf of the State.
3. Mr. Manoj Pant, learned APP appearing for the State seeks further time to do so.



4. Mr. Vineet Jain, learned counsel appearing for the petitioner however submits, that the role ascribed to the petitioner in the present case is that he was driving a motorcycle and his pillion rider namely Rishu *alias* Abhimanyu fired a shot that killed the deceased/Jitender Lamba; and that the petitioner alongwith his associates had been hired by the brother of the deceased/Rajesh Singh Lamba to carry-out the contract killing.
5. Mr. Jain submits, that other things apart, *vide* order dated 04.12.2023 made in Criminal Appeal No.3693/2023 the Supreme Court has granted bail to a co-accused Abhishek Kumar Singh *solely* on the ground that the said co-accused had undergone incarceration for a period of 10 years and that trial had still not commenced.
6. Mr. Jain argues, that as may be seen from nominal roll dated 05.05.2024 filed in the present case, the present petitioner has also undergone about 10 years and 05 months of imprisonment as of 05.05.2024; and that his overall jail conduct, as well as his jail conduct in the last one year has been 'satisfactory'. Counsel submits that in view of the above, there is no reason to await any status report from the State, since it has now been emphasized repeatedly by the Supreme Court that inordinately long imprisonment as an under-trial violates the constitutional right of an accused to speedy trial under Article 21 of the Constitution of India, which overrides other considerations; and that in such circumstances an accused is entitled to be enlarged on bail.
7. On the other hand, Mr. Manoj Pant, learned APP appearing for the State submits, that as a matter of fact, trial in the matter has



commenced; that 15 prosecution witnesses have already been examined, though about 65 witnesses are yet to be examined.

8. Mr. Pant argues, that the delay in conclusion of the trial in the present case has, at least in part, been the result of two co-accused persons having absconded, one of whom still remains at large. Furthermore, trial has also got delayed because on certain dates of hearing the petitioner was not produced for trial since he was in custody in Ranchi, Jharkhand.
9. Learned APP also draws attention to nominal roll dated 05.05.2024, which records that the petitioner is also serving life sentence and a 14-year sentence in 02 other cases, that were registered against him in P.S.: Dhurwa, Ranchi, Jharkhand.
10. However, Mr. Jain argues, that abscondence of co-accused persons cannot be reason to penalise the petitioner by inordinately delaying his trial, while also keeping him in prison.
11. Mr. Jain points-out, that in another case that is reflected in the nominal roll, the petitioner's sentence has already been suspended by the High Court of Jharkhand during the pendency of his appeal before that court. A copy of order dated 23.11.2020 passed by a Division Bench of the High Court Jharkhand in Criminal Appeal (D.B.) No. 1118/2019 has been appended to the present petition to support this submission.
12. Mr. Jain also argues, that another co-accused Rajesh Singh Lamba, who is alleged to have hired the petitioner and his other associates to eliminate his brother Jitender Lamba (deceased) has already been admitted to regular bail *vide* order dated 08.01.2024 made in BAIL



APPLN. No. 1793/2023 by a Co-ordinate Bench of this court. A copy of order dated 08.01.2024 has also been appended to the petition.

13. Upon a conspectus of the facts and circumstances of the case, and especially considering that *vide* order dated 04.12.2023, the Supreme Court has already admitted one of the co-accused persons to regular bail *solely* on the ground that the said accused had been in prison for a period of 10 years as an undertrial; as well as the fact that another co-accused has been admitted to regular bail *vide* order dated 08.01.2024 made by a Co-ordinate Bench of this court, this court is persuaded to allow the present petition.
14. In this regard, this court places reliance on the recent decision in ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh***¹ in which the Supreme Court has re-emphasized the importance of the constitutional right of an accused to expeditious trial, stressing that regardless of other countervailing factors, the right to a speedy trial under Article 21 of the Constitution must be given primacy. The relevant portion of *Sheikh Javed Iqbal* (supra) reads as follows :

“32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent

¹ 2024 INSC 534



it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence....”

(emphasis supplied)

15. To be sure, the status of the petitioner in relation to other cases which are pending against him, or in which he may have been convicted, is a completely different matter; and the status of the petitioner's custody in those matters would be decided by the concerned courts. This court must be dealt with the present bail petition only in the context of the position obtaining in case FIR No.486/2013 dated 30.09.2013 registered under sections 307/34 IPC at P.S.: Tilak Nagar, New Delhi, which charges have been modified *vide* chargesheet dated 01.02.2014 to sections 302/201/120-B/34 IPC and sections 25/27/54/59 Arms Act.
16. As a sequitur to the above, the present petition is allowed.
17. The petitioner **Ravinder Rathi @ Akash @ Nitu S/o Om Prakash Rathi** is admitted to *regular bail* pending trial in case FIR No.486/2013 dated 30.09.2013 registered under sections 307/34 IPC at P.S.: Tilak Nagar, New Delhi, which charges have been modified *vide* chargesheet dated 01.02.2014 to sections 302/201/120-B/34 IPC and sections 25/27/54/59 Arms Act, subject to the following conditions:
 - 17.1. The petitioner shall furnish a personal bond in the sum of Rs. 50,000/- (Rs. Fifty-Thousand Only) with 01 surety in the like



amount from a family member, to the satisfaction of the learned Trial Court;

- 17.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 17.3. If the petitioner has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court;
- 17.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
- 17.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer.
18. Nothing in this order shall be construed as an expression of opinion on the merits of the pending trial.
19. The petition stands disposed-of.
20. Pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 18, 2024/ak