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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 1439/2023 & CRL.M.A. 31678/2023 (Addl.
Documents)
DEEPAK @ RAHUL Petitioner

Through: Mr. Tanmay Mehta, Mr. Vijay
Kasana, Mr. Jaidev Solanki, Mr.
Kshitiz Chhabra, Mr. Abhijeet
Vikram Singh & Mr. Chirag Verma,
Advocates.

versus

STATE Respondent

Through: Mr. Mukesh Kumar, APP for the
State with Insp. Daljeet Singh, P.S.
Najafgarh.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

ORDER
23.02.2024

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1. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR No. 501/2021, under Sections 302/482/120B/34 of the IPC and Sections 25 & 27 of the Arms Act, registered at P.S. Najafgarh.
2. The case of the prosecution as per status report dated 19.07.2023, authored by Insp. Ajay Kumar, SHO, P.S. Najafgarh, Delhi is as under:

“It is humbly submitted that on 15.09.2021, a PCR call vide DD No. 119 was received at PS Najafgarh regarding one person shot in Ajay Park, Najafgarh. On receipt of the PCR Call, police staff reached at the spot i.e. in front of H. No. 188, Dalmil road, Ajay Park, Najafgarh, Delhi where one 1-10 car No. DL 12CE 5794 on which 6 fired hole were present on front windscreen, bonnet and right front pillar, was found lying. Lot of blood was lying on the rear side front seat of the car and on the ground outside car. Many fired cartridges were lying scattered on the ground and inside car. It was revealed that injured had



been evacuated to hospital by his friends. One person named Charan Singh @ Bablu was also present there at the spot. Crime team was called at the spot and SOC was got inspected and photographed. A total of 18 fired cartridges and one live cartridge were recovered from the spot. Meanwhile, information was received from Swasthik Hospital regarding one person named Amit S/o Inder Singh R/o Village Dichaun Kalan, Delhi declared brought dead vide MLC No. 119/21. As per MLC, there were 13 entry and exit wound present on the body of deceased Amit in addition to a gunshot injury on forehead.

The present case was registered on the statement of Dinesh @ Bhau S/ Sh. Mayadutt Ko H. No. 645, Village Jharoda, Delhi wherein he stated that he used to come to property office of Dimmy @ Karamveer Singh near Heera Tower, Dichaun Road, New Delhi. On 15.09.2021, he 100 came to the office at about 2.30 PM where 5/6 boys were already there. After about half an hour, deceased Amit had also come to the office. At about 7.30 PM, he told Amit that he is going to his home and left the office but Amit also came outside and told him that Charan Singh @ Bablu is coming with liquor and they will take one two drinks and then go to home. So, he came back to office but Amit remained outside office. After some time, Amit came inside office with Charan Singh @ Bablu and told him that he did not bring liquor and we will go to Dwarka and take some fine quality whisky. On this, he told Amit that he is getting late but Amit said that they would take wine from nearby shop. All three of them sat in the 1-10 car of Charan Singh @ Bablu which was driven by Amit. First, they went to Wine shop in front of Swasthik Hospital, Nangloi Road but did not get good liquor. Then they reached wine shop, Tuda Mandi and purchased a whisky bottle. They were going back to property office via Tehsil Road and Dalmil Road. When Amit was just to take right turn from Dalmil road side, one Hyundai Verna car No. DL 9CAR 3705 blocked their way. Sensing the danger, Amit reversed the car but two persons came out of car and started firing indiscriminately towards driver side of the car on Amit. One motorcyclist also joined them and fired on Amit. He hid behind the rear side seat and roll down on the road after opening the back window and run away. After reaching some distance away, he called Deepak, brother of Amit and Rohit. They came there in a car and took Amit to Swasthik Hospital where he was pronounced brought dead. Case was registered and investigation was taken up.

PM examination of the deceased was got conducted at mortuary,



RTRM Hospital and dead body was handed over to deceased's brother Deepak. Deepak stated that in the month of January 2021, Jaibhagwan along with his son Krishan and two associates namely Sonu Dahiya and Rajesh fired on Amit and his maternal cousin Ankush and a case vide FIR No. 15/21 dated 12.01.2021 u/s 307/34 IPC & 25/27 Arms Act was registered at PS BHD Nagar against them. Jaibhagwan, Sonu Dahiya and Rahesh were arrested but Jaibhagwan's son Krishan was absconding since then. He further told that they were pressurizing them to withdraw the case but they refused. He apprehended that Krishan alongwith his associates has committed murder of his brother.

On 17.09.2021, information was received that one accused Deepak @ Rahul has been arrested by STE, Dwarka in case FIR No. 396/21 w/s 25 Arms Act, PS Sec. 23, Dwarka and he disclosed his involvement in this murder case. Weapon of offence has also been recovered from him.

Accused Deepak @ Rahul was arrested in the case. He disclosed that he alongwith his brother Krishan and his friend Darshan Dabas murdered Amit. His TIP was got conducted from complainant Dinesh @ Bhau who correctly identified the accused.

The Verna car used in the commission of offence was found unclaimed on the road from Najafgarh Road to Nangli Dairy. PC remand of accused Deepak @ Rahul was obtained and interrogated. He disclosed that he used car bearing No. PB 69D 0096 of his friend Aaditya. On the instruction of Darshan Dabas, he got a number plate of white colour verna car from HN graphics, Kakrolla, Delhi and he identified the shop. M/cycle used was their m/cycle bearing no. DL 9 SBT 8600.

During investigation of the case, it was revealed that whole incident was captured in a Govt. CCTV Camera installed at site It. No. 155B, Ajay Park, Najafgarh, Delhi. CCTV feed of these cameras was obtained from PWD, GNCT, Delhi. Photography and videography of accused Deepak @ Rahul was conducted at FSL, Rohini, Delhi after taking permission from the Hon'ble court and has been sent to FSL for comparison. The FSL result is still awaited. Recovered weapon has also been sent to FSL for matching and the FSL result is still awaited.

Later, Darshan Dabas was formally arrested in this case on 17.03.2022 and three days PC remand was obtained. On the basis of information divulged by accused during his police custody remand, accused Charan



Singh @ Babloo was arrested who was part of the conspiracy and was taken in by accused Krishan to track the deceased Amit Shokeen and to fetch him out. Later, accused Krishan was also arrested in this case on 14.01.2023 and was sent to judicial custody. Chargesheets against all the four accused persons were filed before the Hon'ble Court.

Presently, the case is pending trial before the Hon'ble court of Sh. R.L. Meena, Ld. ASJ/South West, Dwarka Courts, Delhi and is at the stage of prosecution evidence. The Hon'ble trial court, vide order dated 07.11.2022 framed charge under section 302/120B/482 IPC against applicant accused Deepak @ Rahul, Darshan Dabas and Charan Singh @ Babloo as accused Deepak @ Rahul and Darshan Dabas conceded charge and application u/s 227 Cr.p.c filed by accused Charan Singh Babloo seeking discharge was dismissed. Total 81 witnesses were cited as prosecution witnesses, out of which 20 witnesses are public witnesses. 12 public witnesses have been examined and 08 important public witnesses including Deepak, brother of deceased Amit are yet to be examined.

During the course of trial on 07.03.2023 and 23.03.2023, proxy counsel for witness Deepak, brother of deceased Amit appeared before the Hon'ble court and submitted that he is not able to appear before the Hon'ble court as he is having apprehension of being attacked by accused party. Next date has been fixed for 05.08.2023 and as charge w/s 302/120B IPC has been framed against the accused Krishan on last date of hearing i.e. 10.07.2023, PW. 1, 2 and 3 have been summoned again for their examination.

It is further submitted that co-accused Krishan (brother of applicant accused), Darshan Dabas and Charan Singh @ Babloo are habitual criminals and involved in many cases of murder, hurt and robbery.”

3. Learned counsel for the applicant submits that the material witnesses with respect to the identification of the present applicant have not supported the case of the prosecution. It is submitted that PW-1/Mr. Dinesh Kumar @ Bahu, on whose statement the FIR was recorded, has not supported the case of the prosecution, including the identification of the present applicant. It is pointed out that the evidence of motive with respect to the present applicant



in the present FIR was the statement of aforesaid PW-1/Mr. Dinesh Kumar @ Bahu and PW-14/Deepak Shokeen (brother of the deceased). It is pointed out that both the aforesaid witnesses have also not supported the case of the prosecution with respect to the said motive. Similarly, other public witnesses relied upon by the prosecution including PW-5/Himanshu and PW-6/Diyanshu, have also not supported the case of the prosecution with respect to the aforesaid FIR. It is further pointed out that the scientific evidence including the ballistic report has also not supported the case of the prosecution *qua* the present applicant with respect to the recovery of the arm from him. The other piece of evidence as pointed out is CCTV footage of the date of the incident and it is submitted that the said CCTV footage was sent to the FSL.

4. It is pointed out that the FSL report has been received. As per FSL report the applicant could not be identified from the sample (exhibit sent to the FSL) on the ground that external facial features were found hidden in CCTV footage by face mask and cap worn by the person. It is pointed out that the applicant has been in judicial custody since 17.09.2021 and there is no other previous involvement of the present applicant in any offence.

5. *Per Contra*, learned APP for the State, on instructions of the Investigating Officer, submits that although the material witnesses including the complainant and brother of the deceased have not supported the case of the prosecution and the FSL report failed to identify the applicant's facial recognition; however, the prosecution will be sending the CCTV footage for the GAIT analysis which was not available with FSL Rohini, Delhi.

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

7. On a pointed query from the Investigating Officer, it is submitted that



the said report has not been sought till date. Again on a pointed query from the Investigating Officer, it is submitted that the identification of the present applicant in the CCTV footage was on account of the statement made by the witnesses, who have since turned hostile.

8. As noted herein before, the material witnesses of the prosecution with respect to the present FIR have not supported the case of the prosecution. It is a matter of record that the author of FIR, PW-1/Complainant as well as brother of deceased/PW-14 relied upon by the prosecution to establish the identity as well as motive, have not supported the case of the prosecution. Similarly, the other scientific evidence including the ballistic report as well as the CCTV footage on record has not supported the case of the prosecution with respect to the present applicant. The prosecution has cited 81 witnesses out of which only 16 witnesses have been examined so far. As per nominal roll received from the concerned Jail Superintendent, the applicant has been in judicial custody since 17.09.2021. The nominal roll further reflects that the present applicant has no previous involvement in any other case.

9. In totality of the facts and circumstances, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with two sureties of like amount, one of which shall be a family member, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India 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.
10. The application is allowed and disposed of accordingly.
11. Pending applications, if any, also stand disposed of.
12. Needless to state that nothing stated hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present application.
13. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
14. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

FEBRUARY 23, 2024/bsr