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

+ **BAIL APPLN. 1129/2024**

SHIVAJI @ CHUNNU

.....Petitioner

Through: Mr. Prafulla, Ms. Varsha Rani, Mr. Lakshay Sonkar, Mr. Dilip Bagwar, Ms. Preeti Sharma and Mr. Prashant Kumar, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for the State with Mr. Anvesh Chandila, Mr. Ujjwal Gupta, Mr. Nikhil Kunal, Mr. Vishal Kaushik, Mr. Sushant Chaudhary, Ms. Sunita Farswan and Mr. Dishant Tiwari, Advocates.
Insp. Vikas Panwar, PS Farsh Bazar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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31.07.2024

1. The present application under Section 439 Cr.P.C has been filed by the Petitioner for grant of regular bail in FIR No.830/2015 dated 02.10.2015, registered at Police Station Farsh Bazar for offences punishable under Sections 302/34 IPC and Sections 25/27 of the Arms Act.
2. Material on record indicates that the co-accused - Danish had earlier approached this Court for grant of bail by filing the bail application being BAIL APPLN. 1808/2023. This Court disposed of the said bail application vide Order dated 09.01.2024. Paragraph Nos.7 and 8 of the said Order dated 09.01.2024 read as under:

“7. As recorded in the order dated 09.05.2023 passed



by the learned Additional Sessions Judge, one of the witnesses, that is PW -8, has identified the applicant as the person who held on to the deceased while the co-accused shot him. It has further been observed in the said order that 26 witnesses have already been examined by the prosecution and the trial is likely to be concluded soon. The applicant was earlier declared as a Proclaimed Offender and was arrested only later.

8. Though the applicant has been in custody for a period of around five years, keeping in view the above facts, I do not deem it appropriate to release the applicant on bail at this stage of the trial. However, the learned Trial Court is requested to expedite the trial and make an endeavour to conclude the same within a period of six months from today.”

3. A perusal of the aforesaid Order shows that the Trial Court was requested to expedite the trial and make an endeavour to conclude the trial within a period of six months. Since the trial was not completed within a period of six months and no progress in the trial is being made, the Petitioner has approached this Court by filing the instant application for grant of bail.

4. On 24.05.2024, this Court was apprised of the fact that the Orders passed by this Court is not being complied with in the right earnest.

5. Learned Counsel appearing for the Petitioner points out that on 15.05.2024, four months adjournment has been given by the Trial Court and the matter has now been fixed for 03.09.2024. The trial is, therefore, being conducted ignoring the spirit of the Order dated 09.01.2024 passed by this Court.

6. Learned APP appearing for the State informs the Court that out of total 40 witnesses, 29 witnesses have been examined and the remaining 11



witnesses are left to be examined.

7. The Trial Court is requested to proceed further with the matter keeping in mind the spirit of the Orders of this Court and should make an endeavour to ensure that long dates are not given in the matter, especially, when the High Court has made a request that trial be concluded expeditiously.

8. The Bench of Five Judges of the Hon'ble Apex Court in Kartar Singh v. State of Punjab, (1994) 3 SCC 569 has held that speedy trial is a fundamental right under Article 21 of the Constitution of India.

9. The Petitioner is an accused of a serious offence of murder. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the Apex Court has laid down the parameters for granting or refusing bail to an accused and the same reads as under:

“i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

ii. nature and gravity of the accusation;

iii. severity of the punishment in the event of conviction;

iv. Danger of the accused absconding or fleeing, if released on bail;

v. character, behavior, means, position and standing of the accused;

vi. Likelihood of the offence being repeated;

vii. Reasonable apprehension of the witnesses being influenced; and



viii. Danger, of course, of justice being thwarted by grant of bail.”

10. Nominal roll of the Petitioner indicates that the Petitioner has undergone 8 years 6 months and 5 days of incarceration as on 10.05.2024 and as of today he has undergone about 8 years and 8 months of incarceration which is a very long period of time. The Order dated 09.01.2024 passed by this Court in BAIL APPLN. 1808/2023 filed by the co-accused - Danish applies with much greater force in the case of the Petitioner herein.

11. Applying the law laid down by the Apex Court, this Court is not inclined to grant bail to the Petitioner at this juncture. However, in view of the time spent by the Petitioner in incarceration, this Court requests the Trial Court to expedite the examination of remaining 11 witnesses and conclude the trial as expeditiously as possible, preferably within a period of four months from today even if it is necessary to have a day-to-day trial.

12. In case the trial is not concluded within four months, the Petitioner is at liberty to approach this Court pointing out that the Orders of this Court is not being carried out in letter and spirit. After examination of witnesses, the Petitioner is at liberty to approach the Competent Court for grant of bail as it would amount to change in circumstances.

13. With these observations, the bail application is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 31, 2024

S. Zakir