



2024:DHC:6507



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

% *Date of decision : 28th August, 2024*

+ **BAIL APPLN. 1130/2024 & CRL.M.A. 9840/2024**

ARMAN ALIApplicant

Through: Mr. B.S. Chaudhary, Adv.
through V.C.

versus

STATE (NCT) OF DELHI THROUGH SHO WITH P.S.
BURARIRespondents

Through: Mr. Ajay Vikram Singh,
APP for the State.
Insp. Jaspal Singh, PS
Burari, Insp. Ashok
Kumar, main IO.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J (Oral)

1. The present application is filed seeking regular bail in FIR No. 666/2020 dated 09.12.2020, registered at Police Station Burari, for offences punishable under Sections 302/34 of the Indian Penal Code, 1860 ('**IPC**') and Sections 25/27 of the Arms Act, 1959.
2. Charges against the applicant were framed under Sections 302/120B of the IPC & Sections 25/27 of the Arms Act, 1959.
3. The FIR was registered on a complaint given by one Raunak Singh, who alleged that on 09.12.2020, two persons were



2024:DHC:6507



murdered. It was revealed that the victims Anuj and Anand, who were injured in a scuffle, both had sustained gunshot injuries. The complainant Raunak Singh, who is alleged to be an eye witness, gave a statement that he had met the victims and was told that the persons namely, Shahi Hasan and Saddam have been terrorising and that they need to be taught a lesson. The complainant alleged that the victim Anand then received a call from Saddam, and both of them started abusing each other. The victim then called Saddam to meet at the place of the incident. It is alleged that Saddam came along with the applicant and one Ali Hassan and started beating the victims. During the scuffle, Saddam took out a pistol and fired on the victims.

4. The chargesheet was filed in the present case. It is alleged that the CCTV footage was procured from the scene of crime. It is alleged that all the persons who were arrested, disclosed that they were working on the direction of accused Anil Kumar @ Swami. He had paid ₹1,00,000/- to the accused Saddam to purchase fire arms.

5. The applicant was arrested on 10.12.2020 and has since been in incarceration. It is pointed out that accused Anil Kumar @ Swami, who is alleged to be the mastermind of the crime, has already been admitted on bail.

6. The State has not challenged the order passed granting bail to the accused Anil Kumar @ Swami. It is an allegation of the prosecution that the accused Anil Kumar @ Swami had instructed the applicant and other accused persons to kill the victims. The prosecution has cited four eye witnesses of the

BAIL APPLN. 1130/2024

Page 2 of 5



2024:DHC:6507



crime, including the complainant Raunak Singh.

7. It is undisputed that the eye witnesses have turned hostile and have not identified the applicant.

8. The learned Additional Public Prosecutor for the State submits that the witness Raunak Singh was clearly seen in the CCTV footage to be present at the place of the incident when the crime was committed. He submits that the applicant is also visible in the CCTV footage to be present at the time of the incident.

9. It is not denied that the bullet which led to the death of the victim was not fired by the applicant. The CCTV footage also does not show the applicant to be firing at any of the victims. It is undisputed that merely because the eye witnesses have turned hostile cannot be a ground for acquittal of the accused persons. The statement of the eye witnesses is only a corroborative piece of evidence and the learned Trial Court can certainly rely on other evidences to pass a final order in regard to conviction or acquittal of the accused persons. However, the benefit of the same cannot be denied to the accused at the stage of considering the application for bail.

10. The applicant is also stated to be of clean antecedents. On being asked, it is submitted that only eight witnesses out of 48 witnesses have been examined till date, and the trial is likely going to take a long period of time.

11. It is trite law that period of incarceration is also a relevant factor for grant of bail. Once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration

BAIL APPLN. 1130/2024

Page 3 of 5



2024:DHC:6507



for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail (Ref. *Union of India v. K.A. Najeeb* : AIR 2021 SC 712).

12. Considering the aforesaid discussion, the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the boundaries of the country without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

11. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

BAIL APPLN. 1130/2024

Page 4 of 5



2024:DHC:6507



12. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

13. The bail application is allowed in the aforementioned terms.

14. Pending application also stands disposed of.

AMIT MAHAJAN, J

AUGUST 28, 2024
“SK”