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

+ **BAIL APPLN. 1157/2024 & CRL.M.A. 10060/2024**

SANJAY SHARMA

..... Petitioner

Through: Mr. Abdees Samad, Mr. Masood
Alam, Mr. Sanjay Jain, Ms. Amisha
Jain and Mr. S.W. Nomani, Advs.

versus

THE STATE GOVERNMENT OF NCT OF DELHI Respondent

Through: Mr. Raghuinder Verma, APP for State
with Insp. Vipin Yadav and Insp.
Prakash Roy IO SHO/ Karawal Nagar

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER
17.05.2024

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1. The present petition has been filed seeking regular bail in connection with FIR No. 344/2020 under Sections 302/201 IPC and Sections 25/27 of Arms Act registered at PS Karawal Nagar, Delhi.
2. The case of the prosecution is that the petitioner's wife Reena was having an illicit relationship with deceased and the petitioner / accused was enraged due to the said illicit relationship and had killed the deceased in the house of his father-in-law where the deceased had gone to meet his wife Reena. This led to the registration of aforesaid FIR.
3. The learned counsel for the petitioner submits that the prosecution has



cited 03 eye witnesses including the father-in-law of the petitioner namely, Krishan Pal, wife Reena, as well as, Mohan Kumar Sharma (the plumber) who was examined as PW1.

4. He submits that out of the said three witnesses, two eye witnesses namely, Krishna Pal, as well as, Reena have not supported the case of the prosecution. As regards eye witness Mohan Kumar Sharma (PW1), the contention of the learned counsel for the petitioner is that there are material improvements in the testimony of the said witness, therefore, the testimony of the said witness does not inspire confidence in the prosecution's story. To buttress his contention, the learned counsel has made reference of the testimony of PW1.

5. It is also the contention of the learned counsel that the police claims to have recovered the offence weapon i.e. pistol from the pocket of the petitioner on the date of incident i.e. 02.07.2020, whereas the alleged blood stained shoes of the petitioner were recovered only on 04.07.2020. He submits that it does not stand to reason that the petitioner will throw his shoes in the garbage dump i.e. the alleged place of recovery and will continue to keep the offence weapon in his pocket.

6. He submits that even the source from where the petitioner procured the said offence weapon has also not been verified by the prosecution. He further contends that no independence witness was joined in the recovery proceedings.

7. According to the learned counsel the petitioner has clean antecedents and he is in custody since 02.07.2020. The custody is no more required regard being had to the fact that nothing more is to be recovered from the petitioner and all material public witnesses have already been examined.



8. *Per contra*, the learned APP has argued on the lines of the status report. He submits that PW-1, who is the eye witness, has supported the case of the prosecution, whereas PW6 and PW5 are the father-in-law and wife, respectively, of the petitioner and it is for the said reason that they have not supported the case of the prosecution.

9. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have perused the record.

10. It is not in dispute that out of three eye witnesses cited by the prosecution, two have not supported the case of the prosecution at all. The only witness who has supported the case of the prosecution to an extent is Mohan Kumar Sharma (PW1).

11. A birds eye view of the testimony of PW1 shows that there are some material improvements in his testimony. However, the probative value of his evidence as well as his reliability as witness shall be seen by the learned Trial Court at the stage of trial.

12. On a query posed by the Court, the learned APP on instructions from the IO, fairly states that the source of the weapon could not be verified. Further, the submission of the learned counsel for the petitioner is that the said offence weapon has been planted as no independent witness was joined at the time of recovery but at this stage it will not be appropriate to make any comment on the same as it may prejudice the case of the prosecution or the defence. The entire evidence will have to be appreciated by the learned Trial Court holistically at an appropriate stage.

13. However, it is intriguing that though the offence weapon was recovered from the petitioner on the date of incident itself but the blood stained shoes were recovered only after 02 days of the incident.



14. The aforesaid circumstances coupled with long incarceration of approximately four years tilt the balance in favour of grant of bail to the petitioner.

15. Apart from the merits of the case there are other factors which needs to be considered for the purpose of deciding bail application. The petitioner is in custody since 02.07.2020 and the investigation is complete. Further all the material witnesses have already been examined, therefore, there is no apprehension of petitioner influencing the material witnesses in the event he is enlarged on bail.

16. Further, the prosecution has cited 37 witnesses and till date only 08 witnesses have been examined. Inevitably, the trial is going to be a protracted one and in the given facts and circumstances of the present case the petitioner cannot be kept in custody for indefinite period to await the outcome of trial.

17. It is also not the case of the prosecution that the petitioner is a flight risk or that he has a criminal record.

18. In view of the above, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall



not change the mobile number without prior intimation to the Investigating Officer concerned.

c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

19. The petition stands disposed of.

20. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.

21. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

22. Order be uploaded on the website of this Court.

23. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

MAY 17, 2024
N.S. ASWAL