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

+ **BAIL APPLN. 1170/2024**

MAHESH KHATRI @BHOLI Applicant
Through: Mr. Joginder Tuli (through
VC), Ms. Joshini Tuli, Ms.
Shruit Agarwal & Mr.
Saurabh Mishra, Advs.

versus

STATE NCT OF DELHI Respondent
Through: Mr. Utkarsh, APP for the
State with Ms. Ayushi
Jain, Adv.
SI Mahendra Patel, PS-
Narela.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
% **04.04.2024**

CRL.M.A. 10194/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed under Section 439 read with Section 482 of the CrPC seeking regular bail in FIR No. 96/2021 for the offence under Section 307 of the IPC and Sections 25/27 of the Arms Act, 1959.
4. The present FIR was registered on a complaint made by the complainant, namely, ASI Rajkumar. It is alleged that on



15.03.2021, when the complainant was on night duty, he received a call regarding the incident. It is alleged that when the complainant reached the spot, he found out that the injured person had been sent to the hospital. It is alleged that the MLC of the injured person at that stage indicated that he was unfit for statement as he had suffered a gunshot injury on the left side of his neck and bled profusely due to the same.

5. On 22.03.2023, the statement of the injured victim was recorded. In his statement, the victim alleged that the applicant and co-accused Deepal had blocked his way about twenty days earlier when he was returning home. They allegedly stated that he had earned a lot of money and threatened him with dire consequences if he did not give them ₹5,00,000/-. He alleged that on 15.03.2021, when the applicant was returning home, the applicant and co-accused Deepak stopped their scooty in front of him and again blocked his way. He alleged that co-accused Deepak told the applicant to kill him as he had not given them money and complained about them to their family members. It is alleged that the applicant then shot at the victim. It is alleged that the victim tried to duck downward to save himself, however, the co-accused Deepak caught his hand and restrained him, whereafter the applicant again shot the victim. It is alleged that the victim was thereafter taken to hospital by his brother.

6. It is alleged that two empty shells were recovered from the place of incidence. The applicant and the co-accused person were both arrested on 08.04.2021. It is alleged that the weapon allegedly, used in the commission of the offence was recovered from the accused persons.

7. Chargesheet has been filed against the applicant for the offences under Sections 307/386/506/34 of the IPC and Sections



25/27 of the Arms Act, 1959.

8. The fifth application of the applicant under Section 439 of the CrPC for grant of regular bail was dismissed by the learned Trial Court *vide* order dated 18.03.2024.

9. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.

10. He submits that the victim (PW1) and the victim's brother (PW2) have already been examined and they have not supported the case of the prosecution.

11. He submits that the applicant is from the poor strata of society and is the sole bread winner of his family, which includes his two minor children, his wife and his widowed mother.

12. He submits that the trial is likely going to take a considerable amount of time as the matter is still at the stage of prosecution evidence.

13. It is contended by the learned counsel for the applicant that the applicant is on bail in all the other cases that he is involved in

14. The learned Additional Public Prosecutor ('APP') for the State opposes the grant of any relief to the applicant. He submits that the offence alleged in the present case is heinous in nature and attracts a minimum punishment of imprisonment for life.

15. He submits that the applicant had committed the alleged offence with a pre-planned intention to extort money from the victim.

16. He submits that if the applicant is granted bail, it is possible that he will commit further offences of similar nature against society.

17. He submits that the applicant resides on the same street as the victim.

18. I have heard the counsel and perused the record.



19. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

20. It is pointed out that the victim in his statement before the learned Trial Court on 20.07.2023 had stated that he could not see the face of the assailants as they had covered the same with a cloth. Similarly, the victim's brother, on the same day, in his statement before the learned Trial Court had stated that he had received a call that "somebody" had fired on his brother, whereafter, he went to the spot of the incident and took him to the hospital.

21. It is thus apparent that the victim and his brother have turned hostile. It is settled law that the statement of a witness is only a piece of evidence, and for the purpose of conviction, the corroborated part of the evidence of a hostile witness regarding the commission of the offence is to be treated as admissible (Ref. ***Mrinal Das v. State of Tripura: (2011) 9 SCC 479***).

22. The Trial Court while deciding the case has to consider the entire material on record, and can definitely look into the circumstances and other evidence put forth by the defence while passing the judgment. The learned Trial Court, in such circumstances, can also exercise the discretion to recall the witnesses under Section 311 of the CrPC for fresh cross-examination if the same is needed to ensure a fair trial.

23. While multiple involvements of the applicant in other



criminal cases alone is not sufficient to deny bail, this Court cannot entirely ignore that the applicant is involved in about 60 cases and that the prior antecedents of the applicant are of serious nature. The antecedents of the applicant include multiple offences of theft and robbery and those under the Arms Act, 1959. The applicant has already been convicted and undergone the sentence in FIR No.665/2013 for the offences under Sections 356/379 of the IPC and FIR No. 214/2013 for the offences under Sections 356/379/34 of the IPC.

24. It is apparent that when the applicant gets a bail in one case, he commits an offence again. While this cannot be the sole ground to deny bail to an accused person, this Court cannot lose sight of the fact that such persons are a threat to the society and ought not to be released on bail for the sole reason that the victim has turned hostile.

25. The Hon'ble Apex Court in the case of ***Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P. : (1978) 1 SCC 240*** had observed as under:

"Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record — particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant is therefore not an exercise in irrelevance."

(emphasis supplied)

26. It is the duty of the Court to ensure that the witnesses are



not under any threat which prevents them from deposing truthfully. As discussed, the victim and his brother have resiled from their initial statements and taken a diametrically opposite stand now.

27. It is true that delay in trial is one of the factors that has to be considered, however, the same alone cannot be a reason to enlarge an accused person on bail [Ref. *State of Kerala v. Raneef*: 2011(1) SCC 784].

28. Therefore, considering the facts of the present case, this Court is of the opinion that this is not a fit case for exercise of discretion under Section 439 of CrPC.

29. The application is, therefore, dismissed.

30. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the present bail application, and should not be treated as an opinion on the merits of the case and also should not influence the outcome of the trial.

AMIT MAHAJAN, J

APRIL 4, 2024
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