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

+ **BAIL APPLN. 1554/2023 & CRL.M.A. 30451/2023**

DILSHAD

..... Petitioner

Through: Mr.U.M.Tripathi, Adv.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr.Aman Usman, APP with SI
Parvesh Kumar.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

21.02.2024

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1. This Application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for release on bail in FIR No.352/2020 registered at Police Station: Jahangirpuri, Delhi under Section 302 of the Indian Penal Code, 1860 (in short, 'IPC') and under Sections 25/45/59 of the Arms Act, 1959.

2. It is the case of the prosecution that on 27.07.2020, information was received at Police Station Jahangirpuri, vide DD No.126A, from BJRM Hospital regarding admission of the deceased Shakir, aged around 17 years, on account of a gunshot injury. In the hospital, an eye-witness, namely, Mohd. Dilshad (PW-5) was found and his statement was recorded. He stated that he alongwith Aslam, Dilshad (the applicant herein), and Shakir were together in a *jhuggi* for a party. The applicant said that he had paid the dues for the last party but the



others did not pay and called them beggars, upon which, the deceased started hurling abuses at the applicant, following which they started quarrelling with each other. Meanwhile, Dilshad (PW-5) went outside the *jhuggi* to take cigarette. When he came back in the *jhuggi*, he found that the applicant was threatening the deceased that he would teach him a lesson and would kill him. The applicant thereafter took out a pistol and fired it on the deceased. The deceased collapsed there and the applicant gave the pistol to Aslam who fled from there. PW-5 allegedly further stated that he and the applicant took the deceased to BJRM Hospital for treatment where doctor declared him dead during the treatment.

3. The prosecution alleges that the applicant tried to flee from the hospital but was apprehended by the police while trying to do so.

4. The statement of the alleged eye-witness, that is, PW-5 was also recorded under Section 164 of the Cr.P.C. before the concerned Court, wherein, he again supported the case of the prosecution.

5. The learned counsel for the applicant submits that the PW-5 in his statement recorded in the course of trial has not supported the case of the prosecution. He further submits that the FSL report also does not support the case of the prosecution inasmuch as it is reported that individual characteristics of the marks present on the cartridge were found insufficient for an opinion when compared with test fired cartridge cases from the alleged recovered gun from the co-accused Aslam. He further submits that the FSL has further reported that the opinion on the blood stain found on the clothes allegedly recovered at the instance of the applicant can also not be given. He submits that the



applicant has been in jail since the last more than 3 years and 5 months. The prosecution has cited 27 witnesses, out of which only 10 witnesses have been examined and therefore, the trial is likely to take long. He further submits that the applicant has no criminal antecedents and is aged only around 23 years.

6. On the other hand, the learned APP submits that though the PW-5 sought to resile from his earlier statements, on being confronted, he admitted to the statement made and recorded under Section 164 of the Cr.P.C. He further submits that merely because the FSL report on the identity of the weapon recovered at the instance of the co-accused and on the bloodstained clothes recovered at the instance of the applicant remained inconclusive, it would, in no manner, affect the case of the prosecution. He further submits that the applicant can abscond if released on bail.

7. I have considered the submissions made by the learned counsels for the parties.

8. Even as per the prosecution, the incident started when the applicant, the deceased, and two other persons were having a party at a *jhuggi*. It is a case of sudden fight that had erupted between the applicant and the deceased. It is the applicant who had taken the deceased to the hospital. There are other pieces of evidence which have been referred by the learned counsel for the applicant on which this Court, for the present case, need not opine. The fact remains that that the applicant has been in jail for more than 3 years and 5 months and does not have any criminal antecedents.

9. The purpose of judicial custody is not to punish but rather to



ensure that the accused is present for trial. The Supreme Court in its judgment of *Vinod Bhandari v. State of Madhya Pradesh*, (2015) 11 SCC 502, observed that:

“12. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. Reference may be made to decisions of this Court in Kalyan Chandra Sarkar v. Rajesh Ranjan, State of U.P. v. Amarmani Tripathi, State of Kerala v. Raneef and Sanjay Chandra v. CBI .”

10. Keeping in view the above circumstances, and the fact that the trial is likely to take long as out of 27 witnesses only 10 witnesses have been examined till date, in my opinion, the applicant has made out a case for being released on bail.

11. It is directed that the applicant Dilshad be released on bail in FIR No.352/2020 registered at Police Station: Jahangirpuri, Delhi under Section 302 of the IPC and under Sections 25/45/59 of the Arms Act, 1959, on furnishing a personal bond in the sum of Rs.10,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:



- i. The Applicant will not leave the country without the prior permission of the learned Trial Court.
- ii. The Applicant shall provide his permanent address to the learned Trial Court. The Applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his 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 shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or tamper with the evidence of the case. In case the Applicant is found to be involved in another case, it will be open to the prosecution to file an appropriate application seeking cancellation of his bail in the present case as well.

12. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.



13. The bail application is disposed of in the above terms. The pending application also stands disposed of.

14. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

FEBRUARY 21, 2024/Arya/am

Click here to check corrigendum, if any