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

+ **BAIL APPLN. 1198/2024**

HARISH SHARMA

..... Petitioner

Through: Mr. Vijay Singh and Mr. Jitender
Singh, Advs.

versus

STATE (THROUGH S.H.O, P.S SAMAYPUR BADLI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State with Insp. Anil Kumar (I.O) ,
PS. P& L Unit.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

22.05.2024

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1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.332/2023 under Sections 307/34 IPC and Sections 27/54/59 of Arms Act (subsequently, charge sheet was filed under Sections 302/307/316/34 IPC and Sections 25/27 of Arms Act) registered at Police Station Samaipur Badli.

2. The case of the prosecution is that there was a celebration of *Kuwa Poojan* of the son of the petitioner/accused at Village Saraspur, Delhi on 02.04.2023 and at about 11:00 p.m, the friends and relatives of the petitioner/accused were dancing on the DJ. The complainant and one Ranju (since deceased) came out of the balcony of second floor and asked the petitioner/accused to stop the DJ, so that they could sleep but instead of stopping the DJ, the petitioner/accused took out a pistol and fired towards the complainant and Ranju (since deceased), as a result of which the Ranju received bullet injuries on her neck and died. This led to the registration of aforesaid FIR.



3. The learned counsel for the petitioner submits that the prosecution has cited two eye witnesses i.e., Ms. Indu (the complainant), as well as, Mohit/owner of DJ. He submits that both the said witnesses have turned hostile. In support of his submissions, he invites the attention of the Court to the testimonies of Ms. Indu, who was examined PW-2, as well as, Mohit/DJ, who was examined as PW-6.

4. He further submits that the empty cartridges case which was recovered from the spot did not match with the country made pistol (offence weapon) recovered at the instance of the petitioner.

5. *Per contra*, the learned APP has argued on the lines of the Status Report. He submits that one of the witness namely Mohan Singh, the husband of the complainant/Indu, who was also cited as witness has also expired.

6. It is not in dispute that the eye witness Ms. Indu/PW-2, who is the *Bhabhi* of deceased, has not supported the case of the prosecution. She has not stated that she had seen the petitioner firing from the pistol. Similarly, Mohit/PW-6 has stated that after he was asked by the police to stop and to remove the DJ at around 11:15 p.m, he left the spot with his belongings. He has also not testified that he had seen the petitioner firing from the pistol.

7. It is also not in dispute that the bullet case which was recovered from the spot did not match with the offence weapon (country made pistol) which was recovered from the petitioner.

8. *Prima facie*, there is no evidence available to connect the petitioner/accused to the offence.

9. Considering the aforesaid circumstances, 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 not leave the Delhi without prior permission of the Court.
 - b) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - c) 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.
 - d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
10. The petition stands disposed of.
 11. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.
 12. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
 13. Order *dasti* under signatures of the Court Master.
 14. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MAY 22, 2024/dss