



2024:DHC:2190



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

Pronounced on: 19.03.2024

+ **BAIL APPLN. 1775/2023**

ISRAIL

..... Petitioner

Through: Mr. Kanhaiya Singhal, Mr. Ujwal Ghai, Mr. Prasana, Ms. Vani Singhal, Mr. Ajay Kumar, Mr. Teeksh Singhal, Mr. Anmol Chopra, Mr. Udit Bakshi, Mr. Anmol Sharma and Ms. Deepali Pawar, Advs.

Versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for State with Insp. Subhash Chand, PS. Jamia Nagar.
Mr. Anand Mishra, Ms. Vandita Nain, Ms. Ayushi Rajput and Mr. Sachin Sharma, Advs. for victim(wife of deceased).

**CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN**

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in connection with FIR No. 445/2016 under Sections 302/120B/34 IPC registered at Police Station Jamia Nagar.



2. *Vide* order dated 30.05.2023, notice was issued in the bail application of the petitioner and the State was directed to file a status report. The State has filed a status report dated 28.08.2023, the same is on record.
3. The case of the prosecution as borne out from the status report is that on 16.05.2016, a PCR call vide DD No. 74-B regarding bullet fire was received in PS Jamia Nagar, which was marked to SI Pankaj Gulia, who proceeded to the spot. On reaching the spot i.e. Noor Nagar Extn. Johri Farm, SI Pankaj Gulia noticed pieces of glasses on the road and came to know that the injured had already been shifted to Holy Family Hospital.
4. On reaching the hospital, SI found injured Mohd. Moin Khan S/o Mohd Naaem Khan aged about 58 years was admitted vide MLC No. C16/015226. The doctor mentioned alleged history as *“while he was parking his car today at around 7:40 P.M. h/o sustained 2 suspected gunshot injury to (R) upper Anterior Chest and he became unconscious immediately first attended by his wife Nishant (all history given by his wife and daughter)”*. On examination *“Unconscious L/E (R) upper Anv near II Inter coastal space just lateral to mild caluicle line wound 1X1 cm nearly triangle shape irregular margins inverted wound.”* Thereafter, the SI tried to trace the eyewitnesses of the incident but in vain. In the meantime, at about 09:10 P.M. the doctor declared the patient as *“dead”*. It is in this backdrop, that the present FIR came to be registered.
5. During investigation, the petitioner and other co-accused namely, Ramesh Kakkar, Ram Phool, Saleem, Amir and Anwar Omaish were arrested on 18.05.216 and co-accused Bilal was arrested on 19.05.2016. During further investigation, it transpired that the deceased was an Assistant Law Officer / Estate Officer with the New Delhi Municipal Corporation and



the recovery suit of license fee in respect of petitioner's Hotel namely, 'The Connaught' was pending in the office of the deceased. It also came to light that the petitioner tried to win over the deceased by offering him hefty bribe running into crores, but the same was refused by the deceased and he had decided to proceed against the petitioner as per law.

6. It is thus, the case of the prosecution that the matter between co-accused namely, Ramesh Kakkar and the NDMC was listed on 17.05.2016 for the parties to file written arguments and seeing no other option left, Ramesh Kakkar entered into a criminal conspiracy to eliminate the deceased and for this purpose he took the help of hired killers, which was provided by the co-accused Ram Phool, PSO of Ramesh Kakkar. Ram Phool (PSO) in turn gave the contract to his colleague Israil (petitioner herein), who further passed this contract to Saleem and Aamir. Aamir then arranged the meeting of Anwar Omaish and Bilal with the petitioner. Anwar Omaish shot the deceased on 16.05.2016, while he was riding the pillion and Bilal was driving the motorcycle.

7. Thereafter, during investigation, weapon of offence i.e. one pistol bearing no. RP 11671 along with one live cartridge was recovered at the instance of accused Bilal from his house, as the pistol was given by Anwar Omaish to Bilal to keep.

8. Mr. Kanhiya Singhal, learned counsel for the petitioner at the outset submits that the petitioner has been incarcerated since 19.05.2016 and as of 02.08.2023, the petitioner has spent more than 5 years in custody. He further submits that the prosecution has sought to examine 61 witnesses out of which till date only 31 witnesses have been examined, therefore, keeping the



petitioner in custody during the pendency of trial, which is not likely to be concluded anytime soon, will not be in the interest of justice.

9. On merits, he contends that the role attributed to the petitioner by the prosecution is that he was a middleman in the said conspiracy and the only evidence which has been collected by the prosecution against the present petitioner is the CDR of the petitioner which allegedly connects him to the co-accused. In so far as the CDR's are concerned, it is submitted that CDR's of the petitioner cannot be taken as a substantive piece of evidence and can only be used for the purpose of corroboration.

10. Drawing the attention of the Court to the CDR's of the petitioner, he submits that there are no telephonic conversations between the petitioner and the main accused in the matter, namely, Ramesh Kakkar. In so far as the telephonic conversations between the petitioner and co-accused namely, Ram Phool and Salim are concerned, the same cannot be taken as an incriminating circumstance against the petitioner as it is the prosecution's own case that Ram Phool and the petitioner were colleagues of one another. Whereas, Salim and the petitioner are cousins and conversations between cousins (*Tau's son*) cannot be taken to be an incriminating circumstance. Further, there are no telephonic conversations between the petitioner and Bilal, from whom the weapon of offence, i.e. Pistol has been recovered.

11. It is fairly conceded by Mr. Singhal that the only incriminating circumstantial evidence produced by the prosecution in its whole case is few calls between Israil and the alleged assailant / shooter namely Anwar, however, he adds that the prosecution has miserably failed to establish and prove the fact that Anwar was the shooter/assailant in the present case as there is no eyewitness to the effect that offence in question was executed by



Anwar, all the more, when the weapon of offence has not been recovered from him.

12. Referring to the location chart of the petitioner, it is submitted that the same does not show any meeting had happened between the petitioner and the main accused of the case or with any of the assailants/shooter of the case. It is the submission of Mr Singhal that the incriminating circumstance pressed into service by the prosecution is that the location of co-accused Ramphool and the petitioner was the same i.e. AIIMS Delhi on the date of incident, however, it is submitted that the same cannot be sustained for the reason that the place of incident is Jamia Nagar which is about 10-11 kms away from AIIMS, Delhi and it is the case of the prosecution itself that Ramphool and Israil were known to each other since many years, therefore, their one single meeting that too far away from the place of incident cannot be considered as incriminating evidence.

13. He further submits that the main accused in the matter, namely, Ramesh Kakkar has been enlarged on regular bail by this Court. He also submits that co-accused Ram Phool has also been granted regular bail *vide* order dated 29.01.2024 passed by learned ASJ(FTC)-02, Saket Courts and it is the prosecution's own case that the role of the petitioner and Ram Phool is similar as they have acted as intermediaries to carry out the conspiracy.

14. He submits that the investigation in the present matter is complete and no further recovery is to be made from the petitioner, in as much as, the main charge sheet along with supplementary charge sheets dated 10.08.2016, 18.08.2016, 21.09.2016 and 08.12.2016 stand filed and the trail is underway.



15. It was also contended by Mr. Singhal that the petitioner is suffering from various medical ailments which are well documented in the form of a medical report of the Jail Superintendent and this shall inure to the benefit of the petitioner.

16. Lastly, he submits that the petitioner was enlarged on interim bail on previous occasions and that it is not the case of the prosecution that the petitioner has misused the liberty granted to him and he has always surrendered on time.

17. It is in this backdrop, it is urged by Mr. Singhal, learned counsel for the petitioner that he may be enlarged on regular bail.

18. *Per Contra*, the learned APP appearing on behalf of the State as assisted by the counsel for the victims has argued on the lines of the Status Report. He submits that the petitioner has been accused of a grave and serious offence, therefore, he may not be enlarged on bail.

19. He submits that as per FSL report No. FSL 2016/F-5137 dt. 20.04.2017, the bullet (projectile) recovered from the body of the deceased was fired from the pistol which was recovered at the instance of co-accused Bilal.

20. He further submits that the CDRs and tower location of the mobile numbers of all the accused persons was analyzed, which establishes their involvement. The attention of the Court was also drawn to the previous involvement of the petitioner *vide* FIR No. 218/2013, under Sections 482/411/34 IPC, P.S. Saket.

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



22. At the outset, it may be noticed that Ramesh Kakkar, who is stated to be the main accused in the present matter, has been enlarged on regular bail by this Court *vide* order dated 03.01.2024 passed in Bail Application 1433/2023. The order granting bail to Ramesh Kakkar was challenged by the next of kin before the Hon'ble Supreme Court in ***Nishat Khan v. State of NCT of Delhi***,¹ which was not interfered by the Apex Court. The order of the Supreme Court dated 22.01.2024 reads thus:

“Though we do not find any reason to interfere with the impugned order, we make it clear that the observations made thereunder are prima facie in nature and, therefore, shall not have any bearing on the trial. We find force in the alternative submission made by learned Senior Counsel for the petitioner that the trial is pending for more than 6 years on the file of Ld. ASJ (FTC), Saket Courts, New Delhi bearing SC No.2783/2016 titled, ‘State vs. Ramesh Kakkar &Ors.’.

The same is directed to be disposed of within a period of one year from today.

The Special Leave Petition is disposed of accordingly.

Pending application(s), if any, shall stand disposed of.”

23. From the above, it is apparent that the order granting regular bail to the Ramesh Kakkar, who is alleged to be the mastermind of the conspiracy, has attained finality, whereas, it is the prosecution's own case that the petitioner has only acted as an intermediary to carry out the conspiracy. It is not the case of the prosecution that the petitioner is the alleged assailant/shooter. The role ascribed to the petitioner being lesser than that of

¹SLP (CRL) Diary No. 1779/2024.



Ramesh Kakkar, he is entitled to the benefit of parity. It also cannot be ignored that co-accused Ram Phool has also been enlarged on regular bail and it is the prosecution's version that Ram Phool, as well as, the petitioner have acted as intermediaries to carry out the conspiracy.

24. Although considerable arguments have been made by Mr Singhal, on the aspect of CDRs' of the petitioner, the same are not being adverted to at this stage. Suffice to say that the CDR's of the petitioner can only be used as supporting or corroborative piece of evidence and cannot form the sole basis of conviction.² Likewise, the evidentiary value of the CDRs can be seen only at the time of trial and not at the stage of considering the bail application. Reference may advantageously be had to the decision of the Supreme Court in *State (By NCB) Bengaluru v. Pallulabid Ahmad Arimutta*³, the relevant paragraph of which reads as under:-

"12. ...The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage trial."

25. The aforesaid factors coupled with the long incarceration of more than five and a half years (as per nominal roll dated 02.08.2023, the custody period is 5 years 1 month and 27 days) furnishes the reason for grant of bail to the petitioner. Even otherwise at the pre-conviction stage, there is a presumption of innocence.

26. It is also to be noticed that the petitioner has been enlarged on interim bail number of times and the said concession has not been misused by the petitioner. Further, all public witnesses have already been examined and

²2023 SCC OnLine Del 1769 :Azad v. State of GNCT of Delhi



only official witnesses are left to be examined. Therefore, there is no possibility of the petitioner influencing the public witnesses in the event he is enlarged on bail.

27. In respect of the antecedents of the petitioner, to be noted that the petitioner has been accused of committing an offence under Sections 482/411/34 IPC registered under at Police Station Saket, suffice it to note that the same pertains to the year 2013 and it is also not the case of the prosecution that the petitioner has been recently involved in any other offence.

28. The Supreme Court in *Prabhakar Tewari v. State of Uttar Pradesh*,⁴ has held that the fact that multiple criminal charges are still pending against the accused by itself cannot be a ground to deny bail. The relevant paragraph of the aforesaid judgment reads as under:

“73.The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order [Vikram Singh v. State of U.P., 2019 SCC OnLine All 5566] of the High Court granting bail. This appeal is dismissed.”

(Emphasis Supplied)

29. Considering the above discussed circumstances in entirety, this Court is of the view that the petitioner is entitled to grant of regular bail pending

³(2022) 12 SCC 633.

⁴ (2020) 11 SCC 648.



trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions.

- a. The petitioner shall not leave the NCR without permission of this Court and shall ordinarily reside at the address as per prison records/as mentioned in the petition;
- b. Petitioner shall surrender his Passport, if any, before the Trial Court at the time furnishing bail bond/surety bond.
- c. Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- d. The petitioner shall furnish to the IO/S.H.O P.S: Jamia Nagar, a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- e. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to the complainant or any of the prosecution witnesses or other persons acquainted with the facts of the case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

30. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

31. The petition stands disposed of.



2024:DHC:2190



32. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.
33. Order *dasti* under the signatures of the Court Master.
34. Order be uploaded on the website of the Court.

VIKAS MAHAJAN, J.

MARCH 19, 2024/dss

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 20.03.2024
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BAIL APPLN. 1775/2023

Page 11 of 11