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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1327/2024 & CRL.M.A. 11574/2024**
ABHISHEK KUMARPetitioner

Through: Mr. Vineet Jain, Advocate.

versus

STATE GNCT OF DELHIRespondent

Through: Mr. Utkarsh, APP for the State with
SI Rahul Yadav, P.S.: Kirti Nagar.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

12.09.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No. 0499/2022 dated 04.11.2022 registered under section 307 of the Indian Penal Code, 1860 ('IPC') and sections 27/54/59 of the Arms Act, 1959 ('Arms Act') at P.S.: Kirti Nagar, Delhi. Consequent upon completion of investigation, allegations under section 120-B IPC and section 25 Arms Act have been added *vide* chargesheet dated 04.02.2023.

2. Notice on this petition was issued on 22.04.2024; pursuant to which Status Report dated 17.05.2024 has been filed on behalf of the State.
3. Nominal Roll dated 18.05.2024 has also been received from the Jail Superintendent.
4. The court has heard Mr. Vineet Jain, learned counsel appearing for the petitioner; as well as Mr. Utkarsh, learned APP appearing on behalf of the State.
5. Mr. Jain submits, that a perusal of the chargesheet filed in the matter would show that the allegation against the petitioner is that on



04.11.2022 he was driving the Scooty when the pillion rider, one Karan *alias* Himanshu, shot at the complainant Rahul.

6. Learned counsel submits, that the allegation goes that the accused persons had planned to kill one Veerbahadur *alias* Veeru, who is the brother of complainant Rahul; but since they could not find Veerbahadur at the relevant time, they instead shot at his brother Rahul (the complainant).
7. Mr. Jain states, that it is *not* the case of the prosecution that the petitioner had fired any shot; and the allegation against him is *only* that he was driving the Scooty and that co-accused Karan *alias* Himanshu was the pillion rider, who shot at the complainant.
8. Counsel further submits, that the petitioner is sought to be identified on the statement of PW-2 Shankar, who says that he used to run a tea-stall on the Mayapuri Chowk.
9. It is pointed-out however, that PW-2 runs a tea-stall just about 500 meters from P.S.: Mayapuri and that he has frequent dealings with the police at the said station; and, most importantly, in the course of his cross-examination conducted on 03.06.2024 the said witness has said : *one*, that it was the pillion rider (and not the petitioner) who fired three rounds in the air, meaning thereby that PW-2 was not witness to the actual incident of shooting at the complainant; and *two*, that the driver of the Scooty *had a handkerchief tied on his face*. In the circumstances, Mr. Jain argues, that the statement of PW-2 by which he purports to identify the petitioner, stands belied.
10. It is further argued, that the petitioner has been in judicial custody since 06.11.2022 and has therefore suffered incarceration of about 01 year



and 10 months; and that of the 32 prosecution witnesses cited in the chargesheet, only 04 have been examined so far.

11. Furthermore, Mr. Jain also submits that co-accused Deepak Singh has already been granted regular bail by a Co-ordinate Bench of this court *vide* order dated 20.03.2024 passed in BAIL APPLN. No. 243/2024, a copy of which order has been appended to the present bail petition.
12. On the other hand, opposing the grant of regular bail, Mr. Utkarsh, learned APP appearing for the State submits, that since it is the prosecution's case that the petitioner was the one who drove the Scooty when the pillion rider Karan *alias* Himanshu shot at the complainant, the petitioner has a direct and proximate role in the commission of the offence.
13. Learned APP submits, that the petitioner's role cannot be equated with the role of co-accused Deepak Singh, who has been admitted to regular bail by a Co-ordinate Bench, since the allegation against the said co-accused was that he had only supplied the weapon used in the commission of the offence.
14. Learned APP further submits, that the petitioner also has another criminal involvement *vide* FIR No. 730/2021 registered under sections 307/188/147/148/149 IPC and sections 25/27 of the Arms Act at P.S.: Moti Nagar, Delhi and therefore does not deserve to be granted bail.
15. Upon a conspectus of the facts and circumstances of the case, what weighs with the court at this stage, is that admittedly the role ascribed to the petitioner is that he was allegedly driving the Scooty when the pillion rider Karan *alias* Himanshu shot at the complainant; and yet, the witness cited to identify the petitioner, *viz.* PW-2 has said in his cross-



examination that the driver of the Scooty *had a handkerchief tied on his face*. This circumstance creates an element of doubt as to the identification of the petitioner by the supposed eye-witness. Furthermore, the prosecution accepts that no recovery has been made from the petitioner, except the Scooty that he was driving.

16. Nominal Roll dated 18.05.2024 received from the Jail Superintendent shows that the petitioner has been in judicial custody for about 01 year and 10 months as an undertrial as of that date; that his jail conduct has been ‘satisfactory’; and that he has already been admitted to regular bail in case FIR No. 730/2021 registered under sections 307/188/147/148/149 IPC and sections 25/27 of the Arms Act at P.S.: Moti Nagar, Delhi.
17. Furthermore, co-accused Deepak Singh has also been admitted to regular bail by a Co-ordinate Bench of this court as referred to above.
18. In the circumstance, this court is persuaded to admit the petitioner – **Abhishek Kumar s/o Kailash Chand** – to *regular bail* pending trial, subject to the following conditions :
 - 18.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount, at least one of which must be from a family member, to the satisfaction of the learned trial court ;
 - 18.2. The petitioner shall furnish to the Investigating Officer a cellphone 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;



- 18.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court ;
- 18.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of 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.
- 18.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer in writing.
- 18.6. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of bail.
19. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
20. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
21. The petition stands disposed-of.
22. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 12, 2024

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