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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1441/2024 and CRL.M.A. 17207/2024

AKASH YADAV

.....Petitioner

Through: Mr. Hirein Sharma, Mr. Anil Dalal,
Mr. Kapil Tyagi, Mr. Saurabh Goel
and Mr. Tushar Ahuja, Advocates.

versus

STATE OF N.C.T. OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP with Mr. Sarthak
Mann, Mr. Rishabh Sharma, Mr.
Kartikey Nayyar, Mr. Harkeerat,
Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

23.07.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 425/2019 dated 30.08.2019 registered under sections 307/34 of the Indian Penal Code ('IPC') and sections 25/27/54/59 of the Arms Act, 1959, at P.S.: Paschim Vihar West, Delhi. Consequent upon completion of investigation, *vide* chargesheet dated 03.12.2019, sections 302/120-B/201 IPC were added.

2. Notice on this petition was issued on 26.04.2024. Status report dated 09.05.2024 has been filed in the matter.
3. Nominal roll dated 08.05.2024 has also been received from the concerned Jail Superintendent.



4. Mr. Hirein Sharma, learned counsel appearing for the petitioner submits, that even as per the chargesheet, the role ascribed to the petitioner/Akash Yadav (who is referred to as *Rao Saheb*) is that he was present at the spot when one of the co-accused, viz. Abhijit Malik, who is the petitioner's nephew, shot one Daljit Rana dead with his pistol.
5. Attention is drawn to the portion of the chargesheet where it is recorded that though the petitioner also started 'filling-up' his pistol with bullets, one of the bullets fell on the ground; and though thereafter his nephew exhorted the petitioner to kill Daljit, in the meantime his nephew had already shot the deceased in the head.
6. It is submitted that the chargesheet also narrates that after being shot in the head, Daljit fell on the sofa, while one of the other persons present started begging them to spare his life; but in the meantime, the petitioner and his nephew fled from the spot in their car.
7. Mr. Sharma further draws attention to FSL Report dated 25.01.2023, to argue that the report establishes that the bullet that killed the deceased was not fired from the improvised pistol that the petitioner is alleged to have wielded, which again establishes that the petitioner was not the one who shot and killed the deceased.
8. Mr. Sharma also argues that in his court deposition, the alleged eye-witness to the incident, viz. PW-1/Prashant Yadav, has narrated that the petitioner and his nephew had left the spot, after which PW-1 had dosed-of and fallen asleep under the influence of liquor. PW-1 further narrates that after sometime he heard a noise like a blast and that he suddenly woke-up to see that someone was pointing a gun towards



him, going on to state however that “ *I do not know who was that person.* ”.

9. It is accordingly argued that even as per the alleged eye-witness to the incident, the petitioner and his nephew *had already left the spot before* someone else came and shot the deceased.
10. Mr. Sharma also submits that 02 of the co-accused persons, viz. Vikas @ Vicky and Anirudh Malik have already been admitted to regular bail *vide* order dated 21.05.2021 made in BAIL APPLN. No. 911/2021 and order dated 07.11.2023 made in BAIL APPLN. No. 2512/2022 by two different Co-ordinate Benches of this court.
11. Furthermore, nominal roll dated 08.05.2024 records that as of that date the petitioner has already spent more than 04 years and 07 months in custody as an under-trial; and though the petitioner is also implicated in case FIR No. 147/2019 under sections 25/27 of the Arms Act 1959 at P.S.: Special Cell, Delhi (which is a matter arising from the same incident), he is also on bail in that case.
12. It is noticed that though the overall jail conduct of the petitioner is stated to be ‘un-satisfactory’; his jail conduct over the last 01 year has been recorded as ‘satisfactory’.
13. On the other hand, Mr. Utkarsh, learned APP appearing for the State submits, that though the allegations against the petitioner are serious in nature, he does not dispute that 02 co-accused persons are already on bail; that the FSL Report received in the matter does not link the improvised pistol that the petitioner wielded with the bullet that killed the deceased; and that PW-1 has turned hostile and has



now said that the petitioner was not present at the spot when the deceased was shot dead.

14. Upon being queried, learned APP informs the court that of the 46 prosecution witnesses in the case only 05 witnesses have been examined so far.

15. Upon an overall consideration of the facts and circumstances of the case, this court is persuaded to allow the present petition, thereby admitting the petitioner **Akash Yadav s/o Shri Rameshwar Yadav** to *regular bail*, upon the following terms and conditions :

15.1. The petitioner shall furnish a personal bond in the sum of Rs. 50,000/- (Fifty Thousand Rupees Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;

15.2. 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;

15.3. 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;

15.4. 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.



- 15.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer.
16. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
17. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
18. The petition stands disposed-of.
19. Pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 23, 2024

V.Rawat