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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1386/2024

DEVENDER @PAPPU @DEV

..... Petitioner

Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Mritunjay Kumar Singh, Mr.
L.K. Verma, Mr. Deepal Goel, Mr.
Saikat Khatua, Mr. Sahil Chaitanya
and Ms. Akshita Tyagi, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Laksh Khanna, APP for State
with Inspector Gaurav Kumar PS
Kishan Garh, Delhi.
Mr. Rhythm Agarwal, Mr. Pankush
and Mr. Kshitiz Garg, Advocates for
complainant.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

24.05.2024

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1. By way of present application filed under Section 439 Cr.P.C., the petitioner/applicant seeks regular bail in FIR No. 57/2020 registered under Sections 302/307/120B/34 IPC and under Sections 25/27 Arms Act at Police Station Kishangarh, Delhi.
2. Mr. Mohit Mathur, learned Senior Counsel appearing for the applicant contends that as per the prosecution case, the incident occurred on 11.02.2020, when a convoy of vehicles led by one Naresh Yadav was proceeding from Siri Fort to Vasant Kunj. It is alleged that in the said convoy, the first vehicle was being ridden by the deceased-Ashok Mann along with Naresh Yadav and Harender Singh. The said vehicle was being



driven by one Ravinder Kumar. It is further alleged that when the convoy reached near Fortis Hospital, the present applicant fired gunshots which hit Harender Singh as well as the deceased. It is submitted that the injured eye witness Harender Singh has been examined who has not supported the prosecution case and has not identified the present applicant as the person who fired the gunshots. Even Ravinder and Naresh Yadav have also been examined and they too have not supported the prosecution case.

It is further submitted that the prosecution relies only on the testimony of one Harender Maan who as per the prosecution case, was travelling in the third vehicle from the vehicle in which the deceased was travelling. He submits that the presence of Harender Maan on the spot is doubted inasmuch as neither any other witness has spoken about his presence on the spot nor any of the documents related to the said incident and prepared on that date bore his signatures. He further states that the FIR is registered after a delay of six hours and that the said witness has a motive to falsely implicate the present applicant, as there are other cases pending between them. All the eye witnesses have been examined and that the petitioner has been in custody since 26.02.2020. Lastly, it is stated that the applicant has earlier been released on interim bail for a period of two months, which concession has not been misused.

3. The bail is vehemently opposed by the learned APP for the State, duly assisted by learned counsel for the complainant. It is stated that though the injured eye witness and the other two occupants of the said vehicle have turned hostile, the prosecution case is supported by the testimony of *Harender Maan*, who has been examined as PW-7, and who has not only testified about the role of the present applicant but has also stated him to be



the one who had fired the gunshots. It is stated that at the instance and based upon the disclosure of the co-accused, the pistol/gun used in the incident has also been recovered. As per the FSL report, the cartridges fired and recovered from the body of the deceased matched with the pistol. It is further stated that the applicant is found involved in two other cases as well, being FIR No. 223/2019 registered under Sections 279/304A IPC at PS Kishan Garh and FIR No. 1023/2015 registered under Sections 452/354/354B/323/506/509/34 IPC at PS Vasant Kunj. He further, on instructions, states that all the eye witnesses have been examined and about 13 witnesses still remain to be examined. It is lastly submitted that the presence of *Harender Maan* on the spot is supported by the MLC of the deceased.

5. At this stage, learned Senior Counsel for the petitioner states that the said other two FIRs pertain to the year 2015 and 2019 and further that the applicant is already on bail in the aforesaid FIRs.

6. The present matter relates to an incident that took place in 2020, whereby while the deceased was travelling in a car with Naresh Yadav, Harender Singh and Ravinder Kumar, as part of a convoy, it has been alleged that when they reached near Fortis Hospital, the applicant fired shots, which injured Harender Singh and caused death of the deceased, who was the uncle of the complainant-Harender Maan. The other occupants of the car, in which the deceased was travelling, have also been examined as prosecution witnesses.

Harender Singh (the injured eye-witness) has been examined as PW-1, who has stated that when the cars of the convoy were stopped at the red light, a person having a turban came and opened fire towards the Gypsy in



which 10-12 persons were present. However, he did not identify the accused persons in Court and was declared hostile and cross-examined by the PP.

Ravinder Kumar, another occupant of the car, was examined as PW-2, deposed that when the jeep was stopped at the red light, Naresh Yadav told him that some firing was going on and asked him to take the jeep towards the left side. When he drove and took a U-turn and dropped Naresh Yadav, he noticed that the deceased was lying injured in the jeep and he immediately took him to the hospital. He also did not identify the accused persons in Court and was declared hostile and cross-examined by the PP.

Naresh Yadav was examined as PW-5, who deposed that when the convoy was stopped at the red light, he heard some noise (*fat fat*), whereafter the driver immediately took the gypsy towards *Andheria Mod* and that he was shifted to another vehicle. He further deposed that when he reached home, he came to know that two persons had sustained bullet injury and one person namely Deepak Maan had expired while another person Harinder had sustained bullet injury.

Harinder Maan, upon whose testimony the entire prosecution case hinges, was examined as PW-7, who deposed that when they reached the red light, the applicant (who he knew previously) came from the side of Fortis Hospital alongwith his brothers Dharamvir @ Kalu Pehalwan and Somraj @ Dhami Pehalwan. Thereafter, the applicant aimed towards the deceased and fired several bullets, out of which 1-2 bullets also hit him. He also correctly identified the aforesaid accused persons (including the applicant) who were present in Court.

7. It is trite law that at the time of consideration of bail application, the Court is not required to undertake a detailed analysis of the evidence and



facts of the case, but only to take a prima facie view upon the same. The exact effect of the injured eye-witness as well as the other witnesses, who were occupants of the car wherein the deceased was travelling, turning hostile and the evidentiary value of their testimonies are aspects which would be examined during the course of trial. Further, while it is true that gravity of the offence alleged to have been committed is a crucial consideration at the time of bail application, the mere fact that a serious offence is stated to have been committed by the applicant/accused cannot in and of itself be the reason for refusal of grant of bail, especially in a case like the present wherein the injured eye-witness and other crucial witnesses have turned hostile.

8. Considering the totality of the facts and circumstances including the period of incarceration of the applicant, the fact that the injured eye witness and the other two occupants of the car have been examined and have not supported the prosecution case, the further fact that all the eye witnesses stand examined as well as the fact that the trial is likely to take some time, it is directed that the applicant be released on regular bail subject to his furnishing a personal bond in the sum of Rs.1,00,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty M.M. and subject to the following further conditions :-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
- ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.



- iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
 - iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
 - v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
- 7. The bail application is disposed of in the above terms.
 - 8. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.
 - 9. Copy of the order be uploaded on the website forthwith.
 - 10. Needless to state that this Court has not expressed any opinion on the merits of the case and have made the observations only with regard to present bail applicant and nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

DASTI.

MANOJ KUMAR OHRI, J

MAY 24, 2024/rd