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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 1450/2024, CRL.M.A. 12675/2024,
CRL.M.A. 26295/2024 & CRL.M.A. 26296/2024

RITIK @ RINKUApplicant
Through: Mr. Tarun Gupta, Mr.
Hirday Viridi, Advocates.

versus

STATERespondent
Through: Mr. Ajay Vikram Singh,
APP for the State.
Inspector Jitender Rana
(P.S. Civil Lines)
Inspector Vikas Malik
(P.S. M.S. Park)
SI Amarpal Talyan (P.S.
G.T.B. Enclave).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
% **02.09.2024**

1. The present application is filed seeking bail in FIR No.85/2021 dated 25.03.2021, registered at police station G.T.B. Enclave, for offences under Sections 186/ 353/ 332/ 307/ 224/ 225/ 482/ 392/ 397/ 120B of the Indian Penal Code, 1860 and Sections 25/27 of the Arms Act, 1959.

2. The FIR in the present case was registered on receiving an information about a firing incident inside the GTB hospital. It is alleged that one under trial prisoner Kuldeep @ Fajja, who was lodged in Mandoli Jail, had gone for a check-up and while coming back to lock up situated inside the hospital, 10-12 persons had attacked the police party to facilitate the escape of accused Kuldeep

BAIL APPLN. 1450/2024

Page 1 of 6



@ Fajja. They also fired on the police party and tried to snatch their arms.

3. It is also alleged that chilli powder was thrown in the eyes of police party. The police party also fired on criminals which led to two of the assailants getting injured.

4. It is alleged that the accused Kuldeep @ Fajja managed to escape. The incident happened on 25.03.2021.

5. It is alleged that on 27.03.2021, the applicant, while in custody in another case being FIR No.85/2021, registered at police station Farukh Nagar, Gurugram, had disclosed his involvement in the present case. The applicant was arrested on the basis of his disclosure.

6. The learned counsel for the applicant submits that the applicant was unnecessarily and falsely implicated in the present case solely on the basis of his own disclosure. He submits that the same is not admissible in law.

7. He submits that the applicant was in custody of the police when he had tendered the alleged disclosure statement regarding his involvement and the same cannot be used against him without any corroborating material.

8. He submits that the trial is likely going to take a long time to conclude and the applicant cannot be made to suffer in custody for the entire duration of the same.

9. The learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the applicant was seen with the other co-accused persons in a hotel where the planning was done to help accused Kuldeep @ Fajja escape from custody.

10. He submits that the applicant had also fired at the police officials and had also thrown the chilli powder on the police party.



11. I have heard the learned Counsel for the parties and perused the record.

12. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

13. It is the case of the prosecution that the applicant had actively participated in the conspiracy of helping the accused Kuldeep escape from custody.

14. The allegations leveled against the applicant are serious in nature. However, it cannot be denied that the applicant was arrested pursuant to his own disclosure while he was in custody. It is not the case of the prosecution that the applicant was identified by any of the witnesses which led to his arrest. At this stage, the evidence against the applicant is that he was visible with other co-accused persons in a hotel. Undisputedly, the CCTV footage of the incident does not clearly indicate the presence of the applicant.

15. Whether the presence of the applicant with the other co-accused persons was for the purpose of conspiring to commit the offence as alleged is a matter of trial and cannot be ascertained at this stage.

16. It is relevant to note that the applicant is in custody since 08.04.2021, despite which, the charges have been framed against the applicant only recently. The prosecution is relying upon 84 witnesses. In such circumstances, the trial is likely to take



considerable period of time.

17. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeer*** : AIR 2021 SC 712 held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

18. While it cannot be denied that the offences alleged against the applicant are heinous in nature, the Hon'ble Apex Court in the case of ***Javed Gulam Nabi Shaikh v. State of Maharashtra and Another***: Crl.A.2787/2024 has observed as under:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

19. The continued incarceration of the applicant will result in the denial of her fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in near future.

20. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

21. Even though it is argued that the antecedents of the applicant do not entitle him for any relief of bail, it cannot be denied that mere pendency of other criminal cases against the applicant cannot be the sole ground for denying the bail.



22. In view of the above, without commenting further on the merits of the case, I am of the opinion that the applicant has made out a *prima facie* case for bail.

23. In view of the above the present application is allowed and applicant is directed to be released on bail (if not in custody in any other case) in the present FIR on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, out of which, one of the sureties necessarily has to be the family member of the applicant, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall appear before the learned Trial Court on every date;
- c. The applicant shall not leave the boundaries of the NCT of Delhi without informing the concerned SHO;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

24. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of



bail.

25. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

26. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

SEPTEMBER 2, 2024

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