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

+ **BAIL APPLN. 1486/2024**

HIMANSHU

.....Applicant

Through: Mr. Rahul Thakur, Mr.
Narvir Singh, Mr. Sandeep
Kumar and Ms. Anjali,
Advs.

versus

THE STATE (N.C.T. OF DELHI)

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with SI
Saurav Sharma, PS Subzi
Mandi.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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27.08.2024

CRL.M.A. 12979/2024 (*exemption from filing certified copies of annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed seeking regular bail in FIR No. 621/2021 dated 10.11.2021, registered at Police Station Subzi Mandi, for offence under Sections 307/34 of the Indian Penal Code, 1860 (**IPC**) and Sections 25/27 of the Arms Act, 1959 (**Arms Act**).

4. The applicant was arrested on 11.11.2021 in the present FIR, which was registered pursuant to a complaint lodged by the complainant alleging that the complainant had an altercation with

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CCL Sujal, and the applicant who is the brother of the CCL, brought a pistol and started firing, during which the complainant's uncle and cousin sister got injured.

5. It is not disputed that both the injured persons, that is, the complainant's uncle and his cousin sister have been examined. During the examination, they have deposed that the bullet had hit them, however the same was fired by some unknown person in the crowd which had gathered outside their house. They further deposed that they were not aware as to who fired the said bullet.

6. 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.

7. However, prolonged incarceration as an undertrial militates against the right to life and personal liberty guaranteed under Article 21 of the Constitution, and is also a factor which has to be kept in mind at the time of deciding the question of grant or refusal of bail.

8. The prime witnesses have already been examined. As noted above, the injured had not identified the applicant as the accused who inflicted the injury.

9. Clearly, the victims have turned hostile. It is settled law that the statement of a witness is only a piece of evidence, and for the purpose of conviction, the corroborated part of the evidence of a hostile witness regarding the commission of the offence can



be treated as admissible. [Ref. ***Mrinal Das v. State of Tripura : (2011) 9 SCC 479***]. The learned Trial Court while deciding the case has to consider the entire material on record, and can definitely look into the circumstances and other evidence put forth by the prosecution while passing the judgment.

10. The statement of the victims or any other witnesses is only an additional or a corroborated piece of evidence. However, the benefit of the same cannot be denied at this stage when the applicant is seeking bail, especially when he is in custody for more than two years.

11. It is also not denied that the trial is likely to take considerable period of time before completion.

12. The applicant is in custody since 11.11.2021. The applicant was barely 18 years of age when he was arrested. Since the chargesheet in the present case has been filed, the custody may itself result in the denial of his 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.

13. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeeb : 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.

14. The applicant is also sated to be of clean antecedents. 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. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or



evading the trial.

15. In view of the above, the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, 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 under no circumstance contact the complainant / other witnesses;
- c. The applicant shall under no circumstance leave the country without taking permission of the learned Trial Court;
- d. The applicant shall appear before the learned Trial Court as and when directed;
- e. 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;
- f. 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.

16. 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.

17. 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.

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

AMIT MAHAJAN, J

AUGUST 27, 2024
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