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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1507/2024**
KARTAR BHATI

.....Petitioner

Through: Mr. Shahid Ali and Mr. Shah Rukh
Khan, Advocates.

versus

STATE THROUGH SHO PS MANDAWLI FAZALPUR

.....Respondent

Through: Ms. Richa Dhawan, Ld. APP for the
State with SI Sukhvir Singh P.S.
Mandawali.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

23.07.2024

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1. A Bail Application under Section 439 Cr.P.C has been filed by the petitioner Kartar Bhati in FIR No.384/2019 registered under Section 307/120B/506/34 IPC and 25/27 Arms Act at Police Station Mandawli Fazalpur, New Delhi.

2. It is submitted that the accused is in Judicial Custody since 15.12.2019 on the false allegations of having fired a fire arm shot at the complainant. Surprisingly, as per the MLC the gun shot had hit him near the left ear, but as per the case of the Prosecution he along with his friend, went to the hospital on his motorcycle. It is difficult to believe that a person who has suffered a gunshot injury, would himself drive the motorcycle to go to the hospital. Furthermore, the perusal of the MLC shows that the complainant or his friend did not disclose the name of the assailants. Also, there is a delay in registration of FIR. According to the prosecution Deepak Kandela, the co-accused who had the motive since he had threatened the



complainant few days before the date of incident, however, has already been granted bail.

3. It is not in dispute that the complainant in this case was subsequently murdered in respect of which FIR No.247/2020 was registered, in which the petitioner was also named as an accused. However, he has been released on bail vide Order dated 07.02.2024 because he was able to establish that he was not present at the scene of crime. It is argued that the subsequent FIR cannot be a reason to deny the bail to the applicant.

4. It is further submitted that the petitioner is languishing in jail for more than four and a half years. There are 20 witnesses, out of which only 3 have examined and that too in part. The trial is bound to take a long time. Further incarceration of the petitioner in jail would result in violation of fundamental rights of life and liberty of the petitioner.

5. Reliance has been placed on the judgments of Hon'ble Supreme Court in Gudikanti Narasimhulu & Ors. V. Public Prosecutor, High Court of Andhra Pradesh 1978 AIR 429; Anwari Begum vs Sher Mohammad (2005 (7) SCC 326); and Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40 to submit that the personal liberty of an accused or a convict is a fundamental right guaranteed under Article 21 of the Constitution of India and can suffer lawful eclipse only in terms of procedure established by law. The rule generally is 'bail not jail' and the court dealing with application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

6. In the end, it is submitted that no fruitful purpose would be served by keeping the petitioner in jail. He is willing to abide by any conditions that may be imposed upon him. Hence, a prayer is made for grant of bail.



7. The **Status Report** has been submitted on behalf of the Prosecution, wherein it is submitted that the petitioner is involved in more than one heinous cases. The FIR No.247/2020 P.S. Mandawli has been registered in which he was formally arrested on 31.07.2020. It is claimed that he is a desperate criminal dangerous to the Society, generally armed and his part criminal record and his operations with accomplices and he being wanted in other cases, are indicative of his likelihood of escape from the justice. The bail is, therefore, opposed.

8. **Submissions heard.**

9. The allegations against the petitioner are of having inflicted a gunshot injury upon the complainant, but it is also not under challenge that despite having suffered the injury, the complainant himself drove his motorcycle to reach the hospital. As has been rightly argued even though there is a subsequent FIR No. 247/2020 registered against the accused, but he has submitted that because he was able to establish that he was not present on the scene of crime, he has been granted bail in the said case.

10. In this case it cannot be overlooked that the petitioner is in jail for more than four and a half years. There are 20 prosecution witnesses out of which only 3 have been examined and it may take a long time for the prosecution to conclude the trial. As has been observed in the case of Sanjay Chandra (Supra) that the objective of bail is neither punitive nor preventative and deprivation of liberty must be considered as a punishment, unless required to ensure that the accused would stand the trial in the Court, the Court owes more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and duly found guilty. His further incarceration would only be



prejudging his conviction. Considering the nature of allegations and the incarceration for more than four and half years, along with the fact that his co-accused have already been admitted to bail, the petitioner is hereby admitted to bail on the following conditions:-

- a) The petitioner/accused shall furnish a personal bond of Rs.40,000/- and one surety of the like amount, subject to the satisfaction of the learned Trial Court.
 - b) The petitioner/accused shall appear before the Court as and when the matter is taken up for hearing.
 - c) The petitioner/accused shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number, without prior intimate to the Investigating Officer concerned.
 - d) The petitioner/accused shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
 - e) The petitioner/accused shall not leave the country, without permission of this Court.
 - f) The petitioner/accused shall not change his residential address and in case of change of the residential address, the same shall be intimated to this Court, by way of affidavit.
11. Status Report filed today is taken on record.
 12. The Bail Application is accordingly disposed of.

NEENA BANSAL KRISHNA, J

JULY 23, 2024/va