



2024:DHC:8697

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

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Judgment delivered on: 11.11.2024

+ **BAIL APPLN. 1628/2024 & CRL.M.A. 14166/2024****DEEPAK TIWARI**

..... Applicant

versus

THE STATE NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Z.A. Siddiqui, Adv.

For the Respondent : Mr. Ajay Vikram Singh, Mr. Lalit Sharma,
Ms. Divya Narang, Ms. Poonam Sachdeva,
Mr. Nitesh Sapra, Ms. Bhawna Gandhi, Ms.
Ashna Bhalla, Ms. Somya Bhagat &
Ms. Shrishti Setia, Advocates.
SI Tilak Raj, PS Ranhola

CORAM**HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present application is filed seeking regular bail in FIR No. 08/2019 dated 07.01.2019, registered at Police Station Ranhola for offences under Sections 302/34 of the Indian Penal Code (IPC), and under Sections 25/27 of the Arms Act, 1959.

2. Briefly stated, on 06.01.2019, the police received information regarding an incident where two persons, later identified as Deepak

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*BAIL APPLN. 1628/2024**Page 1 of 7*



2024:DHC:8697



and Neeraj, were found injured and bleeding on Baprola Main Road, near a local school. They were immediately transported to a hospital, where they were declared brought dead. It is alleged that both had sustained gunshot injuries. Consequently, the present FIR was registered.

3. During the investigation, the scene of the alleged crime was examined, whereby, bloodstains, two damaged bullet shells, and stones scattered near the location of the bodies were found. The post-mortem reports indicated that both deceased persons had suffered multiple gunshot wounds. Neeraj had wounds to his collarbone and chest, while Deepak sustained a bullet wound to his left shoulder. The post-mortem reports confirmed that these gunshot wounds were the cause of death.

4. During the investigation, it was revealed that Deepak Tiwari (applicant/accused), his brother and a co-accused, had animosity with the victims. The statement of eyewitness - Sachin Thapa was recorded under Section 161 of the CrPC, wherein he stated that he was with the deceased at the time when the accused, Deepak Tiwari and Suraj Tiwari, opened fire on them. He further stated that he narrowly escaped and saved his life.

5. It was further revealed that accused Deepak Tiwari and his co-accused were arrested in connection with another FIR bearing No. 06/2019 dated 09.01.2019 for offence under Section 25 of the Arms Act, and had disclosed their involvement in the present case during police interrogation. The applicant was formally arrested on 28.01.2019.



6. It is alleged that the accused, Deepak Tiwari, in his disclosure statement, stated that the deceased, Neeraj, had been involved in an affair with his sister, which caused embarrassment to his family. This led him to procure a pistol and other ammunitions. He also admitted to stealing a bike and altering its number to execute the crime.

7. During the investigation, the weapons used in the alleged offence, along with the fired ammunition were seized and were sent to the Forensic Science Laboratory (FSL) for analysis. The FSL report confirmed that the bullets recovered from the body of the deceased had been fired from the weapon recovered from the accused.

8. After the completion of the investigation, the charge sheet was filed in the present case for offences under Sections 302/307/34 of the IPC and for offences under Sections 25/27 of the Arms Act.

9. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that the petitioner was not present at the scene of the crime at the time of the alleged incident and that the entire case against him is based on false and fabricated evidence. He submitted that the statements of the prosecution witnesses, including the alleged eyewitness, were inconsistent and unreliable, pointing out contradictions in their testimonies recorded under Section 161 of the CrPC and during the cross-examination.

10. He submitted that the applicant had been granted interim bail on several occasions and had not misused the liberty granted to him. It was also submitted that the petitioner was a young individual with a



promising future and that prolonged detention without conclusive evidence would be detrimental to his life and career.

11. *Per Contra*, the learned Additional Public Prosecutor (APP) for the State submitted that the offences alleged against the applicant are of a grave and heinous nature, involving pre-meditated murder of two individuals. He argued that the prosecution has produced sufficient *prima facie* evidence, including eyewitness testimony, forensic findings, and ballistic reports, all of which implicate the applicant in the alleged offence.

12. It is submitted that the testimony of eye witness - Sachin Thapa, the prosecution's key witness, clearly identifies the applicant as being involved in the altercation and the subsequent firing. The learned APP further contended that releasing the applicant on bail at this stage would jeopardize the ongoing trial. The prosecution also underscores the seriousness of the charges against the applicant.

Conclusion

13. 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.

14. In the present case, the allegation against the applicant is that he assaulted the deceased by gunshots on the alleged date of incident due to prior animosity. Admittedly, the statement was made by the alleged



eye witness after a gap of two days. The same, at this stage, throws a doubt on credibility of his statement and would be tested after the entire evidence is led.

15. The applicant is in custody for more than 5 years. In the present case, the matter is at the stage of prosecution evidence. It is stated that only 10 witnesses have been examined out of the 44 listed prosecution witnesses.

16. It is trite that long period of incarceration is a factor to be considered while deciding the question of bail. The Hon'ble Apex Court in the case of *Union of India v. K.A. Najeeb* : AIR 2021 SC 712, has 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.

17. Substantial period of time has been spent by the applicant in custody. 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.

18. 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.

19. It is further pointed out that the nominal roll of the applicant indicates his involvement in other cases pertaining to FIR No. 06/2019



and FIR No. 39807/2018.

20. It is settled law that criminal antecedents of an accused cannot be one of the sole reasons for refusal of bail. [***Prabhakar Tewari v. State of U.P. : (2020) 11 SCC 648***].

21. Appropriate conditions can be put to allay any apprehension of the applicant committing another offence of a similar nature while on bail.

22. Considering the aforesaid discussion, in the interest of upholding the principles enshrined under Article 21 of the Constitution of India, this Court is of the opinion that the applicant has established a *prima facie* case for the grant of bail.

23. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, 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 under no circumstance leave the country without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he shall reside upon his release, and shall not change the



2024:DHC:8697



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

NOVEMBER 11, 2024