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

+ **BAIL APPLN. 1685/2024**

PRAMOD PEHALWAN

.....Petitioner

Through: Mr. Inderpreet Singh, Mr. Risabh
Kant Sharma, Mr. Tushar Rohmetra,
Advs.

versus

THE STATE GOVT OF NCT OF DELHI & ANR.Respondents

Through: Ms. Priyanka Dalal, APP for the State
with Inspector Brijesh Kumar, PS
Mukherjee Nagar

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

07.08.2024

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1. This is an application under Section 439 Cr.P.C. seeking regular bail in case FIR No. 566/2018 dated 11.10.2018 registered under Section 302 IPC at PS: Mukherjee Nagar.
2. The case as set up by the prosecution is that on 11.10.2018, at about 9.40 PM, a PCR call regarding the gun shot to a person near the Dheerpur Sisodia Tent House in the police station, Mukherjee Nagar was vide DD No.64 A . On enquiry, it was found that an injured person had been taken to the BJRM hospital, Jahangir Puri Delhi. SI Prempal collected the MLC of Shyam Sunder S/o Tulsi Ram who was declared dead while treatment. The place of occurrence was got inspected and photographed by the Crime team and one live cartridge and fired cartridge were seized through seizure memo. The police did not find any eye witness.
3. On 11.10.2018 the post mortem was conducted. During the



investigation, eye witness Parvel @bhola was examined who disclosed names of Rahul @ Khera, Sonu @Sam, Kamlesh and Rahul Ganny. Pursuant to this Sonu @Sam and Rahul@Ganni were arrested on 12.10.2018. On the basis of their disclosure statement pointing out memos was prepared. These accused persons disclosed the name of present petitioner Pramod @ Pahlwan. Co accused Rahul@Ganni disclosed that he had to take Rs.2.5lakhs from one Parvesh@Bholu village Dheerpur, Delhi and he had been demanding his money but was not getting. In the month of September, 2018 Rahul@Ganni along with Kamlesh, Sonu@Sam and Rahul@Khera went to the house of Parvesh@Bholu and threatened him for the dire consequences, but Parvesh@Bholu did not return the money to Rahul@Ganni.

4. Further the case of the prosecution is that on 10.10.2018, the accused persons met at Bhagwan Park, Burari and made a plan to commit the crime on the pretext that Rahul @ Ganni will pay money to each one. It was decided that Sonu@Sam , Rahul@Khera and Kamlesh shall go to the place of Parvesh@Bholu for demanding the money and if Bholu refuses to repay the money, Parvesh@Bholu will be eliminated. It was also derived that if anybody come in the way, he will also be eliminated. In pursuance of the planning, Sonu@Sam , Rahul@Khera and Kamlesh went to the place of Parvesh@Bholu and demanded money. This led to the hot talk and scuffle amongst them. The deceased who intervened in the quarrel was shot by Rahul @Khera as abetted by petitioner. Allegedly, Rahul@Khera also fired a shot on Parvesh@Bholu but did not hit upon Parvesh@Bholu. The certified



copy of call detail record of the accused were seized. It came in the investigation that the petitioner who has having mobile number i.e. 9582782502 is in the name of one Sonu S/o Rajpal who is neighbour of the petitioner. The petitioner was using this number as verified by the subscriber. The petitioner had destroyed the mobile phone however, the CDR details of mobile number 9582782502 suggested that at the relevant time his location was Bhagwan Park, Jharoda Village where the other persons had gathered after the incident. The CDR details suggested its connectivity with other accused persons. The petitioner is also stated to be involved in case FIR 581/2013 under Sections 195/34 IPC of PS Prashant Vihar, Delhi.

5. Learned APP for the State submits that it was very serious offence where the accused persons shot dead an innocent person who was merely trying to intervene amongst the accused persons and Parvesh@Bholu. Learned APP for the State submitted that case is at the stage of trial and if the petitioner is released on bail, he may influence the witnesses.
6. Learned counsel for the petitioner submits that the petitioner is in custody since 2018. It has been submitted that the petitioner has already been granted bail in another case FIR 581/2013 under Sections 195/34 IPC of PS Prashant Vihar, Delhi. It has further been submitted that except the present petitioner and another co-accused Rahul @Moni and all other accused persons have been admitted to bail. Learned counsel further submitted that the material witnesses have already been examined. The complainant and the alleged eye witnesses have already turned hostile.



7. I have considered the submissions.
8. The present case is a case based on circumstantial evidence. The disclosure statement of other co accused persons have led to the arrest of the present petitioner. The evidence has been alleged against the present petitioner by the prosecution is in the form of CDR alongwith the statement of co accused persons. The accused is in the custody since 2018 the trial is taking place at a delayed pace. It is settled proposition that the detention during trial cannot be treated as a punitive detention. All the accused persons have fundamental right of speedy trial. The Apex Court time and again exercises the discretion of granting bail where there is delay in the trial. Reference can be made in *Prabhakar Tewari v. State of Uttar Pradesh and Another* 2020 11 SCC 648.
9. It is a settled proposition that at the time consideration of bail, the Court is required to take only a bird's eye view. The Court at this stage cannot meticulously examine the testimony of the witness nor can it determine the probative value of the witness. The object of judicial custody is not punitive but to secure the presence of the accused during the trial.
10. This is settled proposition the at the state of grant of bail, the Court is required to see the circumstances and factors such as nature of the offence committed, severity of punishment in case of conviction, nature of supporting evidence, reasonable apprehension of tampering the evidence or apprehension of threat to the complainant and prima facie satisfaction of the Court in support to the charge. It is pertinent to mention here that entire testimony was examined by the coordinate



Bench of this Court in Bail Application 4027/2023 & 112/2024 vide order dated 22.03.2024 and inter alia observed that the only eye witness has not supported the case of the prosecution. The case of the present petitioner is in no visible senses more serious than co accused Sonu@Sama and Rahul@Ganni as has been observed by the coordinate Bench of this Court in order dated 22.03.2024. The bail cannot be denied only because the CDR shows the presence of the petitioner at the place where the other accused persons were also present. Whether telephonic conversation with a co-accused is incriminating evidence and CDR records would be appreciated during trial, as observed in *Saloni Arora v. State, 2009 SCC OnLine Del 1669*. In *Azad v. State of GNCT of Delhi and Another, 2023 SCC OnLine Del 1769*, the co-ordinate bench of this Court has held that CDR can only be used to corroborate any other evidence and cannot be the sole basis for conviction. Further, the Apex Court in *State of Maharashtra vs. Ritesh* (2001) 4 SCC 224 and *Anil Kumar Yadav vs. State* (2018) 12 SCC 129 inter-alia held that the admissibility and effect of evidence cannot be tested at the stage of granting bail with further reliance placed on the verdict of the Apex Court in *Kalyan Chand Sarkar vs. Rajesh Ranjarv* (2004) 7 SCC 528).

11. In the above facts and circumstances of the present case, the petitioner is admitted to bail on furnishing a personal bond of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned learned trial court, subject to the appellant providing his mobile number at the time of furnishing the bail bond, and also subject to the following further conditions:



- a) the Petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
- b) the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;
- c) the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- d) the Petitioner shall provide his mobile number(s) to the Investigating Officer and keep it operational at all times;
- e) In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

12. With the above directions, the application is disposed of.

13. It is made clear that the observations made herein are only to the extent of deciding the present bail application before this Court and shall not tantamount to any expression on the merits of the case.

14. A copy of this order be sent to the concerned Jail Superintendent for information and compliance.

DINESH KUMAR SHARMA, J

AUGUST 7, 2024

Pallavi/HT