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

+ **BAIL APPLN. 2594/2023 & CRL.MA 2682/2024**

FAIZAN

..... Petitioner

Through: Mr. Lewish Edward, Mr. Yusuf and
Mr. Yashveer Singh, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Hemant Mehla, APP for State
with Insp. Jitender Tiwari and SI
Manish, PS. Welcome.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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29.01.2024

1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.571/2019 under Section 302 IPC and Section 27 of Arms Act registered at Police Station Welcome, in which subsequently chargesheet was filed under Sections 302/34/120B IPC and Sections 25/27 Arms Act.
2. The case of the prosecution is that information was received by the police and the police officials of the Police Station Welcome proceeded to the spot where they found a person in an unconscious condition and blood was oozing from his chest. SI Nishant sent the said person to GTB Hospital through PCR van where the said person was declared brought dead.
3. The brother of the deceased on 27.10.2019 informed that at about 01:00 p.m, he along with deceased went to GTB Hospital where their sister was admitted. Thereafter, at about 07:00 p.m, deceased went to Welcome near Ravidas Park saying that he was going to meet Ayub, Salman, Kamruddin and Faizan. During investigation, on the basis of CCTV footage



all the said accused persons were arrested.

4. The learned counsel for the petitioner submits that the petitioner was arrested on 03.11.2019 and two live cartridges and one country made pistol were recovered from him and a separate FIR being FIR No. 375/2019 under Sections 25/54/59 of Arms Act was registered at Police Station Jyoti Nagar.

5. He invites the attention of the Court to the judgment passed by the learned CMM, Shahdara Courts in connection with aforesaid case FIR No. 375/2019, whereby the petitioner was acquitted.

6. The learned counsel refers to para 16 and 17.1 of the said judgment to contend that the learned CMM has expressed doubt on the recovery of the country made pistol, as well as, live cartridges from the petitioner herein. The relevant para 16 and 17.1 of the said judgment reads as under:-

“...16. Being guided by above-said case law, it can be said that search of the accused persons by above said police officials was in complete violation of the well established principles of law and the same can be said to be illegal. These illegalities, omissions and discrepancies in the Prosecution version create grave doubts on the recovery of alleged country-made pistol and live cartridges from the possession of the accused persons from the spot as mentioned in the site plan and substantiate the defence version that the alleged recovery was planted upon the accused persons at the police station and that entire proceedings were recorded at the police station and not on the spot.

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17.1. The onus and duty to prove the case against the accused is upon the Prosecution and the Prosecution must establish the charge beyond reasonable doubt which failed to do so in the present case. It is also a cardinal principle of criminal jurisprudence that if there is a reasonable doubt with regard to the guilt of the accused the accused is entitled to benefit of doubt resulting in acquittal of the accused.



Reference may also be made to the judgment titled as Nallapati Sivaiah v. Sub Divisional Officer, Guntur reported as VIII(2007) SLT 454(SC). In the present case, there is more than reasonable doubt with regard to the guilt of accused. So, the benefit of doubt also accrues in favour of accused.

7. He further submits that in the present case also, all the public witnesses have been examined and none of them have supported the case of the prosecution, rather they have turned hostile.
8. He submits that the only piece of evidence in the present case is that the recovery of two live cartridges and country made pistol from the present petitioner, but the same stands knocked out on the basis of the judgment of acquittal and the findings recorded by the learned CMM in connection with case FIR No. 375/2019.
9. He submits that in so far as the CCTV footage is concerned, the same does not capture the spot of the crime.
10. He, thus, urges the court to enlarge the petitioner on bail.
11. *Per contra*, the learned APP has argued on the lines of the Status Report.
12. It is not in dispute that the petitioner has already been acquitted in connection with FIR No. 375/2019 under Sections 25/54/59 of Arms Act by the Court of Ld. CMM *vide* judgment dated 22.02.2023. A perusal of the said judgment shows that the learned CMM has expressed grave doubt on the recovery of two live cartridges, as well as, country made pistol from the petitioner.
13. A perusal of the testimonies of the public witnesses shows that they have not supported the case of the prosecution and they turned hostile. This position is also not disputed by the learned APP, on instructions from the



I.O, who is present in Court. However, he submits that the testimonies of the public witnesses cannot be completely wiped out as they have supported the case of the prosecution to some extent.

14. The probative value of the testimonies of the public witnesses, as well as, their credibility shall be seen by the learned Trial Court at an appropriate stage, however, this Court cannot shut its eyes to the fact that the all the prosecution witnesses have turned hostile and have not supported the case of the prosecution to a great extent. This coupled with the fact that the petitioner has been acquitted in case FIR No. 375/2019 (supra) and the recovery of the arms itself has been gravely doubted, tilts the balance in favour of the petitioner for the purpose of granting the bail.

15. It is not the case of the prosecution that the petitioner has a criminal record or that he is a flight risk. Further, all public witnesses have since been examined, there is no possibility of petitioner influencing the witnesses in the event of he being enlarged on bail.

16. Considering the aforesaid facts and circumstances of the case, I am of the view that the petitioner is entitled to grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall not leave the Delhi/NCR without prior permission of the Court.
- b) Petitioner shall appear before the Court as and when the matter is taken up for hearing.



c) Petitioner 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 intimation to the Investigating Officer concerned.

d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

17. The petition along with pending application stands disposed of.

18. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

19. Order *dasti* under signatures of the Court Master.

20. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

JANUARY 29, 2024/dss