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

+ **BAIL APPLN. 2649/2023**

ZAKIR

..... Petitioner

Through: Mr. Vineet Jain & Mr. Shubham
Gupta, Advocates.

versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with Insp. Pankaj Tomar, P.S.
Timarpur.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

07.05.2024

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1. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR No. 370/2020, under Sections 302/120B/34 of the IPC and Sections 25/27/54/59 of the Arms Act, registered at P.S. Timarpur.
2. The case of the prosecution as per status report dated 13.09.2023, authored by Insp. Pardeep Kumar, SHO, P.S. Timarpur, is as under:

“1. That on 25.10.2020 a PCR Call regarding "Bullet fire upon a person" received at PS Timarpur and the same was marked to SI Shrichand for enquiry. He reached at spot and found that unknown persons fired upon Virender S/o Sukhdev R/o N-62/631, Patrachar Jhuggi, Lukhnow Road, Timarpur, Delhi Age 45 Years. He sustain bullet injury on his head, he shifted to Parmanand Hospital. St Shrichand collected MLC of injured Virender, he was found unconscious and under treatment.

2. He registered above said case U/s 307/34 IPC. During the investigation, he recorded the statements of family members of injured and checked CCTV footage. It is found that three person namely Ravi @ Bangali, Hemant and Inderjeet @ Rahul were fired upon injured Virender. Accused Ravi @ Bangali and Inderjeet @ Rahul were arrested on 27.10.2020; weapon of offence (Katta) and M/cycle were recovered on their instance. Both accused disclosed that Sahdev (Father



of accused Inderjeet) and Zakir (applicant) also involved in the case as a conspirator. Conspirator accused Sahdev arrested on 27.10.2020.

3. On 28.10.2020 information vide DD No. 33A received at PS Timarpur that the injured Virender was expired, during the treatment at Lokpriya Hospital, Meerut, UP. Section 302 IPC invoked in the case and investigation was handed over to INSP Virender Singh. During investigation JCL Hemant @ Akash was apprehended on 18.11.2020.

4. Accused/applicant Zakir provided Katta and M/Cycle to the accused persons. He gave cash to the accused persons just before and after the gun shot to deceased Virender. He also in touch with accused persons after the incident. During investigation it is found that CCTV is installed in front of the house of Zakir. When IO checked the footage on the date of incident was found missing. The said DVR was taken in possession, which has been sent to FSL for expert opinion. During investigation it is found that accused Indarjeet @ Rahul used mobile phone of witness Mohit, after bullet fire upon Virender. Accused Indarjeet called 9 times from 02.16 AM to 03.08 AM on mobile of accused Zakir, who found also involved in the conspiracy of the case. During further investigation accused Zakir was arrested in above mentioned case on 19/12/2020 and same case is under trial.

5. That the present accused is also found to be involved in another case apart from the present as per the SCRB report (The copy of the SCRB report of the present petitioner is annexed herewith-as Annexure-A(Colly).”

3. Learned counsel appearing on behalf of the applicant submits that the latter has been prosecuted in the present FIR on the ground that he is involved in a conspiracy with the other co-accused persons for causing death of the deceased. It is submitted that the PW-2/Abhishek, i.e., eye witness, in his examination-in-chief, has not deposed anything about the present applicant. It is further submitted that the applicant is being prosecuted in the present FIR merely on the disclosure statements of the co-accused persons and there is no direct evidence on record with respect to his involvement in the present FIR. It is further submitted that despite directions from this Court, cross-examination of PW-2/Abhishek was not completed on account



of his absence. It is submitted that the applicant is on bail in other involvements as mentioned in the Nominal Roll and the present applicant, if released on bail, is ready to abide by any condition as deemed fit and appropriate by this Court.

4. *Per contra*, learned APP for the State, on instructions, submits that there is another witness, namely, Mohit, who has given his statement to the effect that after the incident, the co-accused persons, who were prosecuted as person(s) who had shot the deceased, had used the said witness's phone to contact the present applicant 09 times. It is further submitted that as per the CDR the mobile phone belongs to the applicant's mother.

5. Heard learned counsel for the parties and perused the record.

6. It is a matter of record that the case of the prosecution *qua* the present applicant is with regard to his involvement in conspiracy with co-accused persons. Attention of this Court has been drawn to examination in chief of PW-2/Abhishek, wherein, the name of the present applicant has not been mentioned. It is also a matter of record that the involvement of the present applicant with respect to the conspiracy is primarily based on disclosure statements. The other incriminating material as pointed out by learned APP for the State is the alleged call made by the co-accused persons to the present applicant from mobile phone of the aforesaid Mohit. Apart from the fact that the said co-accused persons called up the present applicant through the mobile phone of the said witness, nothing has come on record by way of direct evidence as to the content of the said calls of the said witness. It is also a matter of record that the aforesaid witness, i.e., PW-2/Abhishek is not appearing before the learned Trial Court. In any case, the said witness, i.e., PW-2 has not named the present applicant.



7. As per Nominal Roll received from the concerned Jail Superintendent, the present applicant has been in judicial custody since 19.12.2020. It is pointed out that out of 32 witnesses cited by the prosecution, only 02 witnesses have been examined and the trial is likely to take a long time. Nominal Roll further reflects that in other cases as mentioned, the applicant is on bail.

8. In totality of the facts and circumstances of the case, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with two sureties of like amount, one of which shall be a family member, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave NCT of Delhi without prior permission of the learned Trial Court.
- ii. The applicant shall report to SHO, P.S. Timarpur, once a week, i.e., on every Saturday at 04:00 PM and the concerned officer is directed to release him by 05:00 PM after recording his presence and completion of all the necessary formalities.
- iii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iv. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- v. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- vi. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.



9. The application is allowed and disposed of accordingly.
10. Pending application(s), if any, also stand disposed of.
11. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.
12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
13. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 07, 2024/bsr

Click here to check corrigendum, if any