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

% Judgment delivered on:07.10.2024

+ **BAIL APPLN. 1893/2024 & CRL.M.A. 16599/2024**

**MONU @ VINESH**

..... Applicant

versus

**THE STATE OF NCT OF DELHI**

..... Respondent

**Advocates who appeared in this case:**

For the Applicant : Mr. Arvind Duggal & Mr.  
Kartik Gupta, Advs.

For the Respondent : Mr. Ajay Vikram Singh, APP for the State.  
Inspector Saroj Bala, I.O.& Inspector Ritesh  
PS-Raj Park

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

**JUDGMENT**

1. The present application is filed seeking regular bail in FIR No. 332/2021 dated 09.05.2021 registered at Police Station Raj Park for offences under Sections 302/34 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959.

2. The FIR was registered on a complaint given by Manish, who is an eye-witness of the alleged incident. It is the case of the prosecution



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that all the accused persons entered into a criminal conspiracy to commit the murder of Sumit @Summy (hereafter '**the deceased**'). It is alleged that on 08.05.2021, Sumit was present at a park at Mangol Puri. It is alleged that at that time, the accused persons came to the park and started shouting 'police police', hearing which, the deceased attempted to run away. It is alleged that thereafter the deceased was restrained by the accused persons, and when the deceased tried to run away from the accused persons, the applicant fired a shot in the air. It is alleged that in the meantime the other four accused persons namely Rajan @ Gujji, Sagar @ Besto, Sagar @ Daud, and Sahil @ Nakka, who were carrying dandas and knives in their hands, started mercilessly beating the deceased who then fell down on the walking track. It is alleged that the deceased was taken to the hospital by his friends, namely Manish and Deepak, who were present at the spot. It is stated that upon reaching the hospital, the deceased was declared dead.

3. During the course of the investigation, four accused persons namely Rajan, Sagar @ Besto, Sagar @ Daud, and Sahil were apprehended. The accused persons, in their disclosure, stated that the applicant hatched a conspiracy to carry out the entire incident, and also allegedly provided the weapons in order to commit the murder of the deceased.



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4. It is stated that both the eye-witnesses also stated that the applicant was present at the place of the incident, who was carrying a pistol with him, and had opened fired in the air at the spot.

5. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that the applicant was not present at the place of the incident. He submitted that as per the status report filed by the Police, the applicant was present in Uttar Pradesh, which is roughly at the distance of 120 km from the alleged place of incident. He consequently submitted that the allegations in respect of the alleged presence of the applicant, and his alleged role as per the version of the witnesses is baseless. He submitted that after the lodging of the FIR, the police had also called the mobile number of the applicant, and had also talked to him. He submitted that the same clearly demonstrated that the applicant was not present in Delhi.

6. He submitted that the applicant was instead present at a pre-wedding ceremony of his cousin at Uttar Pradesh. He submitted that the applicant had also gone live on Facebook account from the venue, and had also recorded himself in the said function.

7. He submitted that had any gun been fired as has been alleged by the prosecution, there would have been a possibility of finding an empty cartridge in the vicinity. He submitted that no effort has been made to find any such empty cartridge, or conduct any ballistic test to



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obtain any report on whether the gun allegedly recovered from the place of incident had recently been fired or not. He submitted that the only ballistic test done by the police was to check whether the gun was in a working condition or not.

8. He submitted that the applicant is languishing in custody since 12.10.2021, and till date only 3 witnesses have been examined. He submitted that there is no possibility of intimidating the witnesses since the alleged eye-witnesses in the present case already stand examined, and the remaining witnesses are either police witnesses or formal witnesses. He submitted that the chargesheet has already been filed, and the applicant is no longer required in custody. He submitted that the trial is not likely to conclude in the near future, and prayed that the applicant be enlarged on bail.

9. The learned Additional Public Prosecutor for the State vehemently opposed the request for grant of bail. He submitted that the applicant has been identified by the public witnesses to have been actively involved in beating the deceased at the spot. He submitted that the applicant may evade the judicial process if released on bail. He submitted that the applicant does not have clean antecedents, and is involved in 3 other cases. He submitted that only 3 witnesses have been examined, and 32 witnesses are yet to be examined.

10. The Hon'ble Supreme Court in catena of judgments has consistently emphasised the factors to be taken into account when



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considering bail application, which include: (i) the nature or gravity of the offense; (ii) the character of the evidence and circumstances unique to the accused; (iii) the likelihood of the accused evading justice; (iv) the potential impact of the release on prosecution witnesses and its societal repercussions; and (v) the probability of the accused engaging in tampering.

11. In the present case, the allegation against the applicant is that he was present at the place of the incident, had fired a shot in the air, and has also been identified by the eyewitnesses to have remained actively involved in the commission of the offence. It is not the case of the prosecution that any injury to the deceased was caused by the applicant. Further, while the allegation against the applicant is that he was present at the place of the incident, and had allegedly fired a shot in the air, no bullet is stated to have been recovered.

12. The learned counsel for the applicant submitted that on the date and day of the incident, the applicant was not in Delhi, and was instead present at the pre-wedding ceremony of his cousin at Garh Mukteshwar, Uttar Pradesh. In support of the contention, the learned counsel for the applicant placed reliance upon the Facebook Status of the applicant to contend that the applicant went live from his account on the date and time of the offence. It is the case of the prosecution that the said video did not conclusively confirm the location of the applicant to be that in Uttar Pradesh. It is however averred that a CDR



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analysis of the phone number given by the applicant was conducted. As per the CDR analysis of the mobile number provided by the applicant, the same was found being used in Garh Mukteshwar on the day of the incident.

13. While it is the contention of the prosecution that the same by itself does not establish that the applicant was not present on the place of the incident, it does create a doubt in the story of the prosecution. While the veracity and strength of the allegations against the applicant would be tested during the course of trial, the benefit of such doubt cannot be denied to the applicant at the stage of considering application for bail. The FIR in the present case was registered way back in the year 2021. It has been pointed out that only 3 out of 32 witnesses have been examined. It is stated that the prime witnesses have already been examined.

14. It is trite that long period of incarceration is an important factor to be kept in mind while considering the application for bail. It cannot be denied that the applicant is in custody since 12.10.2021 and the trial is not likely to conclude in the near future.

15. 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.



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16. The continued incarceration of the applicant will 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 the near future.

17. 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.

18. It has also been alleged that the applicant is involved in 3 other cases. Only because the FIRs were registered against the applicant on an earlier occasion, cannot itself be the ground for denying the bail.

19. The Hon'ble Supreme Court in the case of ***Prabhakar Tewari v. State of U.P. : (2020) 11 SCC 648*** had observed that mere pendency of several criminal cases against the accused cannot itself be the basis for refusal of bail. The same can be a factor, however, cannot a sole basis for refusal of prayer of bail.

20. In view of the above, without commenting further on the merits of the case, I am of the opinion that the applicant has made out a *prima facie* case for bail.

21. Considering the aforesaid, the applicant is directed to be released on bail (if not in custody in any other case) on furnishing a bail bond for a sum of ₹50,000/- with two sureties of the like amount (one of the sureties shall be the family member of applicant), subject



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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 boundaries of 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 she would be residing after her release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon her release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.

22. 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.

23. 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



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expression of opinion on the merits of the case.

24. The bail application is allowed in the aforementioned terms.

**AMIT MAHAJAN, J**

**OCTOBER 7, 2024**