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

+ **BAIL APPLN. 2782/2023**

MOHD OSAMA

..... Petitioner

Through: Mr. Kush Sharma, Mr. Nishchaya
Nigam, Mr. Vagmi Singh, Mr.
Shubhankar & Ms. Asiya Khan,
Advocates.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Harish Kumar, P.S. Chandni
Mahal.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

05.03.2024

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1. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR No. 335/2020, under Sections 307/323/341/34 of the IPC, read with Section 25/27 of the Arms Act, registered at P.S. Chandni Mahal.
2. The case of the prosecution as per status report dated 08.09.2023, authored by SHO, P.S. Chandni Mahal, is as under:

“1. That on 17-12-2020, an information regarding MLC case was lodged at PS Chandni Mahal from Dr. Ram Manohar Lohia Hospital, New Delhi vide GO NO.8 and the matter was assigned to SI Pushpender Singh who alongwith Ct. Vivek proceeded at once. There one Nafees@Haddi S/o Sh. Naseer Ahmed R/o H. No. 1307, Rakabganj, Delhi, Age-27 years was found admitted vide MLC No. 231331/66507 with A/H/O -Two bullet injuries on thigh. Injured was found fit for



statement.

2. That IO/SI Pushpender Singh recorded statement of injured Nafees @Haddi. He stated that he worked on contractual basis with BSES. During the intervening night of 16-12-2020 and 17- 12-2020, time- 01:00 Hrs to 01:15 Hrs, he was present at Haveli Azam Khan and having some snacks. There one known person Sadab@Saddu was also present. As injured Nafees @Haddi already knew Sadab@Saddu , hence as a friendship gesture, he put his arm on shoulder of Sadab@Saddu. But Sadab @Saddu got infuriated and began to abuse complainant. Sadab @ Saddu left the place after giving threat to complainant Nafees @Haddi. Thereafter, complainant reached Hamdard chowk and from there he alongwith his friend Rizwan departed on a scooty. But soon, accused Sadab@Saddu obstructed them alongwith his associates. Sadab@Saddu pulled a pistol from his pocket and gave a blow on forehead of complainant with butt of the pistol. Complainant's friend escaped from there in order to save his own life. Complainant fell on ground and soon accused Sadab@Saddu and one of his associate fired one-one round each from their respective pistols. The bullets caused injuries on thigh of complainant. After that, all the accused fled from the spot using the scooty and also made fire in air to create panic. Complainant was admitted in hospital for treatment. Later on, Case FIR No.335/2020 Date 17-12-2020 U/s 307/323/341/34IPC was registered at PS Chandni Mahal.

3. During the course of investigation, blood stained clothes of injured/complainant was seized from hospital. The SOC was inspected and five cartridge cases alongwith two bullet heads were recovered and seized.

4. On 19-12-2020, applicant/accused Mohd Osama was arrested and he was duly identified by complainant in Police Station. Complainant also stated that on the day of incident, applicant /accused was equipped with a desi Katta and even an attempt was made by him to fire but the fire arm not worked. On the other hand, applicant/accused Mohd. Osama confessed his crime. He disclosed that Sadab@Saddu is his real brother. On the day of incident, he alongwith younger brother Armaan(the CCI) were present in home. All of sudden Sadab@Saddu reached and told that a quarrel had occurred with Nafes @Haddi and asked to accompany him. Alongwith Sadab@Saddu, his friends Javed and Nanhey were also present. Sadab@ Saddu was having a pistol and a desi katta was also with him. Similarly, Nanhey was also equipped with a pistol. They began searching complainant Nafees@Haddi and on finding him ,the assault was perpetrated as mentioned



above. Applicant/accused Mohd. Osama also attempted to fire from a *desi katta* but not succeeded. The *desi katta* as used by the applicant/accused during the commission of crime was recovered at his instance from his house alongwith a live round.”

3. Learned counsel for the applicant, has handed up in Court, a copy of the testimonies of the relevant witnesses, i.e., PW-1 and 2 recorded before the learned Trial Court. The same is taken on record.
4. Learned counsel appearing on behalf of the applicant submits that injured eye-witness, i.e, Sh. Nafis (PW-2) and other public witness namely, Sh. Rizwan (PW-1) have been examined before the learned Trial Court. It is pointed out that the complainant/eye-witness, i.e., Sh. Nafis/PW-2 has not identified the present applicant during the course of the trial and has not supported the case of the prosecution with respect to alleged role of the present applicant of attempting to fire at him, using a *desi katta*. It is further pointed out that the alleged *katta* recovered from the present applicant was sent to FSL alongwith the cartridge recovered from the spot. It is submitted that the FSL report, with regard to the same also does not support the case of the prosecution. Learned counsel for the applicant submits that the latter has been in judicial custody since 26.12.2020 and no useful purpose will be served by keeping him in judicial custody any further.
5. *Per contra*, learned APP on behalf of the State, on instructions of the Investigating Officer, submits that the case of the prosecution is that the present applicant had fired the *desi katta* at the injured, however, the said *desi katta* could not fire. Subsequently, the same *desi katta* was recovered from him.
6. Heard learned counsel for the parties and perused the record.
7. A perusal of the statements of the witnesses reflects that the injured



eye-witness/complainant has not identified the present applicant with respect to the role assigned to him by the prosecution. It is further reflected that the other public witnesses has also not supported the case of the prosecution *qua* the present applicant. The present applicant has been in judicial custody since 26.12.2020 and as on 23.02.2024, he has undergone custody of 03 years 01 and 28 days of custody.

8. In totality of the facts and circumstances, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with two sureties of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - v. 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, if any, also stand disposed of.
11. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.



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

MARCH 5, 2024/bsr