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

+ **BAIL APPLN. 2794/2023**

UMESH ALIAS DHILLU

..... Petitioner

Through: Mr. Ravin Rao, Mr. Pallav Gupta,
Mr. Akshit Sawal and Mr. Ayan Sharma,
Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Shubhi Gupta, APP for the State
with Insp. Pawan Kumar, PS: Kanjhawala.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

07.02.2024

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1. Present application has been filed on behalf of the Applicant Umesh @ Dhillu S/o Shri Om Prakash under Section 439 Cr.P.C. read with Section 482 Cr.P.C. seeking regular bail in case FIR No. 203/2020 dated 15.06.2020 under Sections 307/323/341/506/34 IPC and Sections 25/27 of the Arms Act, 1959 registered at PS: Kanjhawala.

2. As per the case of the prosecution, present FIR was registered on complaint of Rameshwar Singh, who alleged that on 14.06.2020 at around 09:30 PM while he was sleeping on a cot in the street near his shop, at around 11.30 PM-12:00 AM, he heard sounds of two boys quarrelling with his son Sombir. One of them was Prakash Harijan while the other was Karambir @ Kala. Heated arguments took place between Karambir and Sombir over the phone. As he was on his way to drop Sombir at his house



and reached near Karambir's house, Karambir and his brother-in-law came out from Karambir's house and started arguing with Sombir. Karambir fired bullets on Sombir due to which he was injured and fell down. Sombir tried to run and Rameshwar tried to save him but he was pushed and suffered injuries. Injured Sombir was taken to the hospital and as per MLC, Sombir had received 'A/H/O Gunshot injury @ (R) side of abdomen + another gunshot injury at (L) lateral origin of thigh on 14.06.2020 at around 11:00 PM' and was declared unfit for statement. Subsequently, he succumbed to the injuries while Rameshwar Singh suffered simple injuries and was discharged. The case against the Applicant herein is that he along with accused Vikas went to the shop of deceased where they took a cold drink but did not pay and Vikas threatened deceased Sombir, leading to heated arguments between all. Thereafter, they went to Karambir and complained that Sombir had abused them on which Karambir got angry and on seeing Sombir and his father coming towards his house, he along with Vikas fired bullets on him. All of them left the spot on the motorcycle of the Applicant after taking the mobile phone of the deceased. CCTV footages of the area were recovered whereby the Applicant was identified. Efforts were made to apprehend him and he was arrested on 21.06.2020 and the motorcycle, used by the three accused in escaping from the scene of crime, was recovered at his instance. All the accused have been arrested including the Applicant and the matter is at the stage of prosecution evidence before the Trial Court.

3. Learned counsel for the Applicant submits that even going by the prosecution case at the highest, the only role attributed to the Applicant is of giving information when the deceased and the Complainant would come near the house of the co-accused Karambir and there is no allegation that he



had a role in giving threats to the deceased or beating him or firing at him. Clearly, the allegations of firing the shots at the deceased from their respective weapons are against the co-accused Karambir and Vikas including the allegations of beating the Complainant. The CCTV footage of the alleged incident retrieved by the investigating agency fortifies the stand of the Applicant that he had no role in the beating and/or firing and it is easily discernible on seeing the footage that Applicant is trying to run away from the spot when the incident took place out of fear as he never expected such a happening but the co-accused attempted to stop him and turned off the engine of his motorcycle and took the keys away. Applicant is seen under great stress during the entire incident, holding his head as he never had any intention to harm the deceased. No overt act has been attributed to the Applicant pertaining to the alleged incident. Perusal of the FIR and Charge Sheet would also substantiate that no role has been attributed to the Applicant in the beating and/or firing and even the MLC shows that no accused was named at that stage. GD Entry No. 0115A dated 14.06.2020 also records that the caller only named Karambir as the person who had fired shots at the deceased.

4. Learned counsel further urges that according to the prosecution there were two eye witnesses to the incident, out of which Complainant has expired and the only other eye witness Vimal Singh @ Lalit, who was examined as PW-1 has not supported the case of the prosecution. Remaining witnesses are formal in nature and there is no chance or reason to influence them in any way, if the Applicant is released on bail. Applicant was earlier released on interim bail by the Trial Court vide order dated 14.06.2021 for 30 days and he surrendered on time and never misused the concession



granted by the Court. Total of 23 witnesses have been cited by the prosecution in the Charge Sheet and till date, only 5 have been examined and therefore, there is no doubt that the trial is not likely to conclude in the near future. Applicant is 35 years of age having three minor children and a wife who are solely dependent on him. Applicant has clean antecedents and is a permanent resident of Delhi and has deep roots in the society. Applicant is ready to abide by any conditions imposed by this Court, if released on bail.

5. Learned APP opposes the bail and contends that Applicant's presence at the site of the crime is not disputed and is clearly seen in the CCTV footage. He has a role to play in the crime as he was the one who tipped off and gave information of the arrival of the deceased to the other co-accused. After the Applicant was arrested, it is at his instance and disclosure that the motorcycle used by all the three accused for escaping from the scene of crime was recovered. Overall conduct of the Applicant is unsatisfactory in the jail as he was found in possession of the mobile phone, for which a punishment ticket was issued to him. The antecedents of the Applicant are not clean inasmuch as he is involved in another case arising out of FIR No. 237/2007 dated 04.12.2007 under Sections 279/337 IPC registered at PS: Kanjhawala.

6. I have heard learned counsel for the Petitioner and learned APP for the State. CCTV footage was shown to the Court, during the course of hearing, with the consent of the parties.

7. There is substance in the stand of the Applicant that there are no allegations against him of beating and/or firing at the deceased and this is evident from the CCTV footage also. As per the prosecution case, there



were two eye witnesses to the alleged incident and it is an undisputed position today that one of them i.e. the Complainant has expired during the pendency of the criminal proceedings. The only other eye witness Vimal Singh @ Lalit has been examined as PW-1. This Court is cognisant of the position of law that testimonies of witnesses recorded during the trial cannot be examined in detail at the stage of considering an application for bail and it is for the Trial Court to decide on the probative value as well as the credibility of the witnesses including the eye witnesses. However, in order to examine the contention of the Applicant that the sole surviving eye witness has not supported the case of the prosecution, this Court is examining the testimony of PW-1 Vimal Singh @ Lalit only for the limited purpose of deciding this application. PW-1 has testified that the Police officer threatened him to become a witness in the case or else he would be implicated, whereas he knows nothing of the incident and had not seen anything. He denied that the accused were consuming alcohol or that the Applicant and Vikas had gone to the shop of Sombir for drinking the cold drinks and any altercation took place between the three. He also denied having heard the noise of a gunshot fire or seeing the deceased lying on the floor. He denied the suggestion that he was deposing falsely or had been won over by the accused. Therefore, PW-1 has not supported the allegations made against the Applicant. Out of 23 witnesses, 5 have been examined which includes PW-1, the most material witness as per the case of the prosecution and the remaining witnesses are only formal. Thus, there is no question of the Applicant influencing material witnesses. Looking at the long list of remaining witnesses, the conclusion of the trial is likely to take a long time. Applicant is in custody since 21.06.2020, except for the period he



was on interim bail for 30 days. Indisputably, Applicant has not misused the liberty when he was admitted to interim bail and it is not the case of the prosecution that he is a flight risk. At this stage of the trial, custody of the Applicant is not required and no purpose will be achieved in continuing his incarceration for an indefinite period, particularly, when the eye witness has made a dent in the prosecution case. Insofar as FIR No. 237/2007 dated 04.12.2007 under Sections 279/337 IPC registered at PS: Kanjhawala is concerned, during the course of hearing, learned APP apprises the Court that the matter was settled between the parties and closed.

8. Considering the aforesaid facts, in my view, Applicant has made out a case for grant of regular bail. Accordingly, Applicant is enlarged on regular bail subject to his furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court and would surrender his passport, if any;
- ii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;
- iii. He shall provide his mobile number to the IO concerned and shall keep the mobile in working condition at all times and the number shall not be changed without prior intimation to the IO and the Trial Court;
- iv. He shall not indulge in any criminal activity or communicate with or come in contact with the witnesses and/or any other



- person associated with the present case and/or intimidate them;
- v. He shall report to concerned IO once a month on a Saturday;
and
- vi. He shall appear on every date of hearing before the Trial Court
unless exemption is sought and granted by the Court on any
given date.
9. Nothing stated in this order shall tantamount to expression of opinion
on merits of the case.
10. Application is allowed and disposed of.
11. Copy of the order be forwarded to the concerned Jail Superintendent
for necessary compliance.

JYOTI SINGH, J

FEBRUARY 07, 2024/shivam