



2024:DHC:7651



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

% ***Reserved on : 29th August, 2024***

Pronounced on: 18th September, 2024

+ **BAIL APPLN. 2805/2023**

CCL MOHIT ALIAS ATANKWADI Applicant

Through: Mr. Praveen Dabas & Mr. Jwala
Singh, Advocates.

versus

STATE THROUGH SHO PS PRASHANT VIHAR

.....Respondent

Through: Mr. Pradeep Gahlot, APP for
State
Insp. Ravinder, PS Prashant Vihar

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This bail application seeks regular bail in FIR No. 221/2017 PS Prashant Vihar under Sections 302/120B/34 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27/54/59 of the Arms Act, 1959.

Factual Background

2. The applicant has been in custody since 29th April 2017; 16 witnesses out of 30 witnesses have been examined. Applicant was



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arrested on 29th April 2017 but remained in a '*place of safety*' which was located at Majnu ka Tila, Delhi, till 13th April 2020. Applicant was granted interim bail, as per the HPC guidelines, during the COVID-19 period, from 13th April 2020 to 18th November 2020 (7 months, 6 days). But he was implicated in FIR No. 362/2020 under Section 302/34 IPC and Section 25/27/54/59 Arms Act PS Aausda, District Jhajjar, Haryana. He was subsequently granted bail by the ASJ District Judge by order dated 11th July 2023 but he could not be released since he has been in custody in FIR No.221/2017.

3. The Progress Report from the *place of safety* states that the CCL possesses education up to 10th standard, and has expressed disinterest in further academic pursuits. He was provided counselling to encourage him to pursue further education; however, he exhibited a strong passion for sports like wrestling, in which he was actively involved in his hometown.

4. Applicant reportedly had been actively engaged in various sports activities provided by the institution, like carroms, volleyball, and basketball, and has a keen interest in recreational pursuits and is instrumental in promoting physical fitness, social interaction and overall well-being through various activities.

5. The Report states that behaviour of the CCL has been satisfactory and no adverse behaviour is to be known. As per the State Crime Records Bureau report, apart from the case in Jhajjar, he is not involved in any other case.

Case of Prosecution

6. As per the case of the prosecution, on 29th April 2017, at 11.30 am, ASI Krishan, who was on duty at gate number 5, Rohini Court,



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came to PP Rohini Courts, as per information that one prisoner was shot by an unknown person in front of that gate, and that person had been apprehended. The injured prisoner had been taken to the hospital, and the person who shot the prisoner was caught by ASI Rajinder.

7. Post investigation, it transpired that ASI Rajinder, who was part of the prison staff, District Jhajjar, Haryana along with staff HC Jitendra, Ct. Raja Ram, Ct. Ramesh and driver Ct. Mausam were taking two prisoners, namely Rajesh and Rohit from Jhajjar jail and had come to Rohini court to produce before the court in a government vehicle. They parked their vehicle in front of the lock-up of Rohini Court. The accused, Rajesh, was produced by S.I. Rajinder, Ct. Raja Ram and Ct. Ramesh in Court number 115. After that, he was to be produced in Court number 310 at 12.30 pm, so they were taking the accused, Rajesh, back to the vehicle. In the meantime, when they came out from gate number 5 and walked 10 steps, someone shot Rajesh from behind. As per the prosecution, the applicant was caught on the spot with the help of staff. The information was relayed *vide* DD number 80PP from BSA hospital and injured Rajesh was brought dead; the FIR was registered.

8. The weapon of offence, along with another loaded *desi katta* was recovered from the possession of the applicant. The ballistic report of arms and ammunition reports that the weapon of offence used by the applicant is in working condition, a special lead marked at Exhibit 'EB1' has been discharged and the pistol seized from him.

Submissions of parties

9. The applicant's counsel contended that the applicant is a CCL and though has been accused of a heinous crime, the trial is yet to progress and the delay in trial is in violation of fundamental rights under Article



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21 of the Indian Constitution. Reliance is placed on the Supreme Court's decision in *Javed Ghulam Nabi Sheikh v. State of Maharashtra* 2024 SCC OnLine SC 1693 where it has been extracted as under:

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.”

(emphasis added)



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10. It was also contended that the applicant has made tremendous progress in the *place of safety* and therefore, as per the report, which is noted above, notwithstanding that he is still not proven guilty, he ought to be given a chance for reformation. Further, as regards being implicated in the Jhajjar FIR, he has already been released on bail.

11. APP for the State however states that bail in the Jhajjar case has been granted on parity since co-accused Sachin had been released. However, that case also involved an allegation of the complainant's son Rahul being taken along by Sachin to the house of the applicant where he suffered a bullet injury. It is further contended that the said crime was allegedly committed when he was out on interim bail in 2020 and therefore does not deserve any leniency from the court. The applicant has a propensity to crime. He was apprehended on the spot and so was his weapon seized by the police team, and another loaded weapon was found on his person. Therefore, evidence against him is very clear and he ought to be convicted on that basis.

Analysis

12. Testimonies of prosecution witnesses have been perused by the Court. PW-2/ASI Ravinder Kumar states that when he was taking the prisoner, who was ahead of the accused Rajesh, Ct. Rajaram was holding the hand of the accused Rajesh. Ct. Ramesh was covering the accused with a carbine and they heard a loud noise like an explosion. They turned back and saw that someone had shot accused Rajesh. The assailant started running but they apprehended the said person. Other police personnel, present at the lock-up gate also came and helped him. The name was later revealed as Mohit and he was having a *desi katta*, in the hand which was taken from him. Another loaded *desi katta* was



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recovered from the left dub of the pants of the applicant. The applicant was made to sit in the lock-up and was taken to P.S. Prashant Vihar where upon interrogation, he revealed his name as Mohit alias *Aatankwadi*, son of Rajbir.

13. A country-made pistol with live rounds was sealed in a *pulanda* and another country-made pistol, which was snatched from the hands of CCL, was also sealed.

14. PW-8, the doctor from the Department of Forensic Medicine stated that in his opinion, death occurred because of a shock resulting from a shattering of the heart consequent upon penetrating trauma to the chest produced by amination of a firearm *via* injury number one, which is eminently fatal and sufficient to cause death. The tears in the clothing of the deceased correspond to the firearm ammunition wounds on the body.

15. Considering that the crime was committed in the presence of many persons and personnel, and applicant had been apprehended on the spot, there is no contention by the applicant's counsel that there was any infirmity or dilution in the prosecution evidence. Moreover, when the applicant was released on interim bail, he was implicated in the Jhajjar FIR. Even though he was released on bail, it was on the parity of the release of co-accused. The Jhajjar FIR was also based on a complaint of death due to the use of a firearm, allegedly at the place of the applicant.

16. The Court is conscious of decisions of the Supreme Court which state that the grievousness of crime will not always be a necessary impediment, and the inalienable right under Article 21 of the Constitution of India applies, irrespective of the nature of the crime.

17. However, it may be useful to appreciate Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("*Juvenile Justice*



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Act”) which delineates the procedure and conditions under which a person, who appears to be a child and is alleged to be in conflict with the law, may be granted bail, including safeguards to ensure that the release does not endanger the child's well-being or the interests of justice.

18. Section 12 of the Juvenile Justice Act, 2015 is extracted as under:

“Section 12. Bail to a person who is apparently a child alleged to be in conflict with law-

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appear reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the persons release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home [or a place of safety, as the case may be] in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order,



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such child shall be produced before the Board for modification of the conditions of bail.”

(emphasis added)

19. In addressing the principles governing juvenile justice, particularly concerning grant of bail, the Supreme Court has emphasized balancing protective framework of the Juvenile Justice Act with the demands of justice particularly in situations involving serious offences.

20. In *Jitendra Singh vs. State of U.P* (2013) 11 SCC 193, the Supreme Court held that while juveniles are generally entitled to bail, it can be denied if there is a likelihood of harm to the juvenile, or if it obstructs the course of justice. Relevant extracts are as under:

“39. The provision dealing with bail (Section 12 of the Act) places the burden for denying bail on the prosecution. Ordinarily, a juvenile in conflict with law shall be released on bail, but he may not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.”

(emphasis added)

21. In *Om Prakash v. State of Rajasthan* (2012) 5 SCC 201 the Supreme Court held that that Courts exercise greater caution when adjudicating juvenile cases, involving serious offenses such as sexual molestation, rape, and murder. Relevant extracts are as under:

“23. Hence, while the courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority



gives rise to a reasonable doubt about his assertion of minority. Under such circumstance, the medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. The matter however would stand on a different footing if the academic certificates and school records are alleged to have been withheld deliberately with ulterior motive and authenticity of the medical evidence is under challenge by the prosecution.

...

33. Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well-planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law-breakers and not the accused of matured mind who use the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him.

....

38. The Juvenile Justice Act which is certainly meant to treat a child accused with care and sensitivity offering him a chance to reform and settle into the mainstream of society, the same cannot be allowed to be used as a ploy to dupe the course of justice while conducting the trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and hence cannot be encouraged.”

(emphasis added)

22. The Social Impact Report has been perused by this Court. It is important to note the applicant has violated the conditions of interim bail



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granted by the Trial Court on 13th April, 2020. The conditions of bail are reproduced herein below:

Applicant/accused is granted interim bail for a period of 45 days upon a request made by him on his furnishing personal bond in the sum of 10,000/- to the satisfaction of the concerned Jail Superintendent

subject to the following conditions:

- (1) That he shall not indulge into similar offence or any other offence in the event of release on bail;
- (2) That he shall not tamper with the evidence in any manner;
- (3) That in case of change of his residential address, he shall intimate the court about the same;
- (4) That he shall regularly appear before the Court on each and every date of hearing;
- (5) That he shall maintain social distancing at the public places i.e. he shall maintain the distance of at least 1.5 meter from every other person;
- (6) That he will not enjoy any marriage function or any other function or any public gathering during the period of this interim bail; and
- (7) That he will surrender before the concerned authorities after the expiry of interim bail of 45 days from the day of his release.

23. In no uncertain terms has the Supreme Court considered the gravity of offence, method and manner of offence as relevant aspects to be considered, while considering bail to a juvenile. These conflate with the factors in proviso to Section 12(1) of the Juvenile Justice Act. The prosecution has placed its case substantially on the grounds that *firstly*, the crime by the applicant was heinous and daring in nature i.e. shooting a prisoner being produced in Court in broad daylight, in presence of police officials; *secondly*, despite being in *place of safety* and granted interim bail with conditions, applicant was involved in another murder with a firearm; *thirdly*, the grave apprehension of the applicant having propensity to crime and also influencing the trial.



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24. In the opinion of this Court prosecution has been able to discharge the burden of denying bail to the accused, since there are reasonable grounds for believing that the release is likely to bring him into association with any criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

25. This bail petition is, therefore, dismissed. Needless to state the right to seek bail subsequently is not foreclosed. These observations are for the purposes of assessing the plea of bail only and the respective contentions will finally be subject to proceedings in trial.

26. Considering that the trial has substantially progressed, it may be concluded within six months.

27. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

SEPTEMBER 18, 2024/sm/tk