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

+ **BAIL APPLN. 1929/2024**

MOHD. MUJAHID

.....Petitioner

Through: Mr. R.H.A. Sikander, Ms. Heema Sahoo, Mr. Mohd. Hasan and Mr. Harshit Gahlot, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State. Insp. Dinesh Chandra and SI Shivam Bisht, P.S. Khajuri Khas.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

06.08.2024

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By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 727/2017 dated 27.11.2017 registered under section 302 of the Indian Penal Code, 1860 ('IPC') at P.S.: Khajuri Khas, Delhi. Consequent upon completion of investigation section 34 IPC and sections 25/27 of the Arms Act 1959 were also added in chargesheet dated 27.02.2018.

2. Notice on this petition was issued on 29.05.2024. Status report dated 02.08.2024 has been handed-up in court today. The status report is taken on record.
3. Nominal Roll dated 30.07.2024 has been received from the Jail Superintendent.



4. Mr. R.H.A. Sikander, learned counsel appearing for the petitioner submits, that in relation to an incident that is alleged to have happened on 26.11.2017, the petitioner was arrested on 01.12.2017 and has remained in custody ever-since except during the period that he was released on interim bail based on the guidelines issued by the High-Powered Committee during the then prevailing pandemic.
5. Mr. Sikander submits, that statements of all witnesses recorded under section 161 Cr.P.C. are 'undated' and the purported eye-witness of the incident, viz. PW-3, has turned hostile. Mr Sikander argues that the prosecutions claims that PW-3 was an eye-witness to the incident since he used to run a *rehri* selling chicken soup at the place where the offence was allegedly committed. Attention in this behalf is drawn to the statement made by PW-3, to show that the said witness has been ambiguous on material aspects and particulars, including the date of commission of the offence and that he has even got the month wrong. It is accordingly argued that since PW-3 had turned hostile, the learned APP cross-examined him, and in the course of such cross-examination, PW-3 has further disclaimed having witnessed the offence.
6. Most importantly, Mr. Sikander argues, that though the allegation is that the petitioner wielded the knife, which caused the wound, which led to the death of the deceased/Asif, it is the prosecution's own case that the knife has been recovered at the instance of and from the house of co-accused Makul @ Rahul.



7. It is submitted that apart from the statement of PW-3, there is neither any forensic nor electronic nor medical evidence to support the prosecution's case against the petitioner.
8. Attention is also drawn to order dated 17.11.2023 made by a Co-ordinate Bench of this court in BAIL APPLN. No. 3435/2023, in which order, appreciating the delay in conclusion of the trial, the Co-ordinate Bench had disposed-of that bail petition as withdrawn, with a request to the learned Trial Court to expeditiously dispose-of the present case, without giving any undue adjournment to either of the parties. It is submitted that despite lapse of almost 10 months from the date of passing of that order, only 01 additional witness has deposed; and of the 25 prosecution witnesses, only 10 have deposed so far.
9. On the other hand, opposing the grant of bail, Ms. Shubhi Gupta, learned APP appearing for the State submits, that the hostility of PW-3 alone cannot be the basis for granting bail to the petitioner, since it is open to the learned Trial Court to either accept or reject the statements on which PW-3 has recanted.
10. Ms. Gupta further submits, that PW-3 has stuck-by the most relevant and material aspects of his statement, viz. of identifying the petitioner as one of the persons who got into a scuffle and then wielded a knife upon the deceased.
11. Upon an overall consideration of the matter, the factors that weigh with the court at this stage are the following :
 - 11.1. *Firstly*, PW-3, the claimed eye-witness to the incident, has admittedly turned hostile. Though it is not the remit of this court to minutely consider or draw inferences or weigh the pros



and cons of the statements made by PW-3 since the trial is still pending, on a first blush reading of PW-3's deposition, it does appear that he has recanted on several material aspects of his earlier statements.

- 11.2. *Secondly*, it is the prosecution's case that the petitioner caused the death of the deceased by wielding a knife; but it is also the prosecution's case that the knife was recovered sometime later at the instance of the co-accused Makul @ Rahul from the house of the latter; and not at the behest or instance of the petitioner. It therefore strains reason as to why, if the petitioner was the one who wielded the knife, was the knife recovered at the instance of the co-accused.
- 11.3. *Thirdly*, the record shows, that except for the interim bail granted to the petitioner from 02.08.2020 to 21.03.2021 and then again from 04.06.2021 to 07.04.2023, during the then prevailing pandemic, the petitioner has been in custody ever-since his arrest on 01.12.2017. It is further observed that there is no allegation that the petitioner either surrendered late or that he violated any condition of the interim bail granted to him.
- 11.4. Nominal Roll dated 30.07.2024 shows that the petitioner has spent more than 04 years in actual custody as an under-trial; that his jail conduct has been 'satisfactory'; and the petitioner has no other criminal involvements.
- 11.5. It is further observed that 15 out of the 25 prosecution witnesses are yet to be examined; and therefore the trial is unlikely to be completed anytime soon.



12. Upon an overall conspectus of the foregoing, this court is persuaded to admit the petitioner, ***Mohd. Mujahid @ Munna s/o Md. Salamat***, to *regular bail* pending trial, subject to the following conditions :
- 12.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rupees Twenty-five Thousand Only) with 02 local sureties in the like amount from family members, to the satisfaction of the learned Trial Court;
- 12.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 12.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned Trial Court;
- 12.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
- 12.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O.
13. The petition is disposed-of, in the above terms.
14. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 6, 2024/V.Rawat