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

+ **BAIL APPLN. 2952/2023**

SIDDHARTH

..... Petitioner

Through: Mr. Anurag Ahluwalia, Mr. Kaushal Jeet Kait, Mr. Kritagya Kumar Kait, Mr. Daksh Gupta, Mr. Gaurav Dua and Mr. Parimal Bhatia, Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Richa Dhawan, APP for State with Insp. Narendra Singh, Ist IO and SI Amit, PS Laxmi Nagar.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

08.04.2024

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1. This application has been preferred on behalf of the applicant Siddharth S/o Sh. Sanjeev Kumar under Section 439 Cr.P.C. seeking regular bail in case FIR No. 226/2022 dated 03.02.2022 under Sections 302/34 IPC and Section 27 of the Arms Act, 1959 registered at PS: Laxmi Nagar. Subsequently, Charge sheet was filed in which Sections 149/120B IPC and Section 25 of the Arms Act, 1959 were added.

2. As per the case of the prosecution, a PCR call was received vide DD No. 01A on 03.02.2022 at PS: Laxmi Nagar regarding a firing incident in Gurudwara Gali in the area of Ramdas Nagar, Laxmi Nagar, Delhi. On reaching the place of occurrence, Police came to know that victim Mayur Chauhan, aged 23 years, had been shifted to Max Hospital, Patparganj, Delhi. On reaching Max Hospital, MLC was received wherein the doctor had declared Mayur as brought dead. Subsequently, the present FIR was



registered on the statement of eye witness Harsh, who stated that on 02.02.2022 when he was with Mayur, a phone call was received by Mayur from accused Vipin Nagar, who asked him to meet him near Balaji Rasoi restaurant. Harsh and Mayur reached near Balaji Rasoi, where accused Vipin Nagar came along with his associates and asked his companions to kill Mayur, who tried to escape but the accused persons followed him and after shooting at him, fled from the spot.

3. It is stated on behalf of the State in the reply to the bail application that after receiving the gunshot injury, deceased Mayur walked a few steps and fell down in a gali near the Gurudwara and called his friends for help. His friends/known persons Harsh, Mohd. Inam, Raman, Aman as well as Mayur's father Sanjeev Chauhan reached the spot. Mayur informed them that he had been shot and disclosed the names of the assailants including the applicant. Same day, raid was conducted at the houses of the absconding accused persons, but they were not found. Applicant was arrested on 04.02.2022 from his house and on interrogation revealed that on 02.02.2022 he was at the house of Vipin Nagar throughout the day. His mobile phone and clothes were seized. CDR analysis also indicated that the applicant remained connected with other co-accused persons on the day of the incident and his location was Flat No. 91, Gali No. 13, Guru Angad Nagar, Laxmi Nagar, the house of Vipin Nagar where the conspiracy was hatched to murder Mayur, Sunder Bhati and Himanshu Sharma @ Bouncer. Applicant played an active role in commission of the offence and is thus not entitled to bail.

4. It is stated that on 05.05.2022, charge sheet was filed against all 11 accused persons and on 07.08.2022, supplementary charge sheet was filed against accused Mudit Chauhan and Sumit Chandela. Exhibits have been



sent to FSL for forensic examination and report is awaited. As on the date of filing of the reply on 31.10.2023, 03 accused persons were absconding. It is further stated that charges have not been framed so far in the Trial Court.

5. Mr. Anurag Ahluwalia, learned counsel for the applicant argues that applicant is a young boy aged about 23 years with deep roots in the society and is a permanent resident of Delhi. Applicant is innocent and has been falsely implicated in the present case. A bare reading of the FIR shows that applicant is not named in the FIR, which was registered at the instance of the star witness Harsh. There are two main witnesses to the alleged incident i.e. Mohd. Inam @ Kallu and Harsh. In his statement under Section 164 Cr.P.C., Mohd. Inam stated that he was told by Mayur before he died that Vipin Nagar, Mohit Nagar, Hardik, Kartik, Harsh Chandela and Nikku Pandat were involved in the alleged incident and applicant was not named by Inam. The main witness Harsh, at whose instance FIR was registered, also did not name the applicant in his statement under Section 164 Cr.P.C. As per the version of the police, all accused persons had a meeting at the petrol pump and in this context, CCTV footage was also retrieved, but applicant is nowhere seen in the said footage and has not been identified in the photographs of the footages annexed to the charge sheet. Aman identified the faces of the assailants in the CCTV footage and named Vipin Nagar, Hardik, Kartik, Nitish Bhardwaj, Chirag Sirohi, Rahul Gupta, Sumit Chandela, Harsha Gujjar, Ankit Lohiya, Naveen Khatana, Jasvinder Singh, Mudit and Ashish, but applicant was not named. In his statement under Section 161 Cr.PC. there is no reference to the applicant.

6. Prosecution has heavily relied on the CDRs and states that several phone calls were made between the applicant and Vipin Nagar on the date of incident. It is a settled law that CDRs is a matter of trial. In any event,



applicant's location was never found at the scene of crime. Applicant does not deny that phone calls were exchanged with Vipin Nagar but calls have been for the last several years as both were known to each other. Prosecution has selectively and deliberately only chosen to rely on the CDRs proximate to the date of the alleged incident to falsely implicate the applicant. There is no recovery from the applicant or at his instance of the alleged weapon or any other incriminating material.

7. It is further argued that applicant deserves bail on account of parity as co-accused Ravi @ Anil Chaudhary has been released on bail by this Court in *Ravi v. State of NCT of Delhi, 2023 SCC OnLine Del 10* and Deepak Bhati was granted regular bail by the learned Sessions Court. Role attributed to Ravi was that he gave Rs.20,000/- in cash to co-accused Vipin Nagar and Nitish Kumar after the murder and also received mobile phones of 05 co-accused given to him by Vipin Nagar after the incident, which were recovered from him. Bail order of Ravi was challenged before the Supreme Court but the SLP was dismissed. Role ascribed to co-accused Deepak Bhati was that he had supplied illegal weapons to the co-accused, which were used in commission of the crime and he has previous involvements in 07 other cases. Prosecution's reliance on previous FIR No. 214/2022 registered against the applicant under Sections 307/427/460/148/149/120B/34 IPC and Sections 25 and 27 of the Arms Act, 1959 to oppose the bail, is misconceived, as in the said case, bail was granted by the Sessions Court since the IO had fairly conceded that applicant was not seen in the CCTV footages on record.

8. It is contended that Trial Court has erred in rejecting the bail placing reliance primarily on the statements of Raman and Sanjeev Chauhan under Section 161 Cr.P.C., overlooking the statements of Harsh and Inam under



Section 164 Cr.P.C., which ought to have been given more credence than statements under Section 161 Cr.P.C. Contradictions in the statements have been overlooked. Illustratively, Raman stated that there were around 20 people who came at the spot whereas Harsh an eye witness stated that there were 08 people.

9. Learned counsel vehemently urges that personal liberty of an individual is of paramount importance and bail is the rule and jail is an exception. Reliance is placed on the judgment of this Court in ***Junaid v. State, 2021 SCC OnLine Del 724***, wherein this Court had granted regular bail to the Petitioners finding that prosecution had not alleged any motive for the crime; there was no recovery of the alleged weapon from the Petitioners; there was no evidence to show that Petitioners were on the scene of crime; and taking note of the submission that statement made against the applicant under Section 161 Cr.P.C. was inadmissible in evidence, relying on the judgment of the Supreme Court in ***Parvat Singh and Others v. State of Madhya Pradesh, (2020) 4 SCC 33***.

10. It is submitted that applicant is in judicial custody since 11.02.2022. Charge sheet has been filed and till date even charges have not been framed. 60 witnesses have been cited by the prosecution and even going by the number of material witnesses, trial is not likely to conclude in the near future. It would, therefore, be unjust to keep the applicant in judicial custody indefinitely and that too, when there is neither any material nor motive to connect the applicant to the alleged offence.

11. Learned APP, *per contra*, argues on the lines of the reply filed to the bail application. It is argued that allegations against the applicant are grave and serious. 02 witnesses, Raman and Sanjeev Chauhan have stated in their statements under Section 161 Cr.P.C. that before his death, Mayur had



narrated the entire incident and named the applicant along with other accused persons. Charge sheet has cited as many as 24 phone calls between the applicant and main accused Vipin Nagar on the day of the incident and CDRs reflect applicant's location at the residence of Vipin Nagar on 02.02.2022. The assertion is that all accused persons have played an active role in the conspiracy and the applicant cannot claim that he is innocent. It is also argued that evidence is yet to commence and there is a possibility that the applicant on being released, may tamper with evidence or influence the material witnesses. It is also stated that some of the co-accused are still at large and it would be detrimental to the case of the prosecution, if Applicant is enlarged on bail.

12. Heard learned counsel for the applicant and learned APP for the State.

13. Close reading of the FIR and Charge sheet shows that present FIR emanates from a complaint by Harsh. The narrative in the FIR is that complainant alleged that on 02.02.2022 at about 10:45 PM, he was asked by a friend Inam to take some clothes to the deceased Mayur. Complainant accordingly headed on a scooty towards the residence of Jannat, who was Mayur's fiancé. When Harsh reached the residence of Jannat, Mayur was also present there and after some time a call was received by him from accused Vipin Nagar, asking him to meet him near Balaji Rasoi. Vipin Nagar had a previous rivalry with Mayur and had attacked him about 3-4 years ago. In this backdrop, complainant and others in the family advised him to avoid meeting Vipin Nagar but the deceased stated that it was only a meeting and left for Balaji Rasoi. Harsh accompanied him. Complainant alleged that as he and Mayur reached the meeting point and were standing next to their scooty, several vehicles including two motorcycles, a swift car and other two wheelers reached the spot. Vipin Nagar alighted from the



swift car and all surrounded Mayur. Vipin Nagar exhorted the others to kill Mayur, upon which the assailants started to pull Mayur inside the vehicle. Mayur, however, managed to escape and ran towards the Gurudwara but Vipin Nagar fired on his back and shouted that he should not be allowed to escape. All other assailants chased Mayur and fired several rounds at him and fled away. Complainant reached the lane near the Gurudwara and found Mayur lying on the ground with blood flowing from his wounds. Complainant informed Aman, another friend of Mayur about the incident and subsequently, Aman, Inam and Sanjeev Chauhan, father of Mayur, reached the spot. Mayur was conscious at that stage and narrated the incident and named the assailants. In the meantime, another friend namely, Raman also reached the spot and Raman and Inam took Mayur on the scooty to Max Hospital, Patparganj, where he was declared brought dead.

14. Having carefully looked at the documents on record including the FIR, Charge sheet and statements of Harsh, Raman, Aman, Inam and father of Mayur, Sanjeev Chauhan, for the limited purpose of deciding this application, it is evident that name of the applicant does not figure in the FIR and he was not named by Aman in his statement under Section 161 Cr.P.C. or by the star/eye witness of the prosecution namely, Harsh in his statement under Section 164 Cr.P.C. Inam, who reached the spot and took the deceased to the hospital on his scooty, also does not name the applicant in his statement under Section 164 Cr.P.C. The CCTV footages of the petrol pump and of the spot near Balaji Rasoi placed on record do not show the presence of the applicant and in none of the statements so far applicant has been identified in the footages. The limited reference to the applicant is in the statements given by Raman and Sanjeev Chauhan under Section 161



Cr.P.C. as against which there is a statement of the eye witness Harsh under Section 164 Cr.P.C., who as per the case of the prosecution was with Mayur, when he left Jannat's house and remained till the alleged incident, wherein he has not named the applicant. As rightly contended by counsel for the applicant, statements under Section 161 Cr.P.C. are inadmissible in evidence and can only be used for the purpose of contradiction. Moreover, the veracity of the statements can only be tested during the trial and cannot come to the aid of the prosecution at this stage of bail.

15. It is undisputed that the alleged weapon of offence was not recovered from the applicant or at his instance. Going by the prosecution case, applicant was present at Vipin Nagar's house on the date of the incident and was not the one amongst the assailants at the spot. CDR analysis allegedly showing that applicant was in touch with the main accused and/or his location on the morning of the date of incident, is a matter of trial and in any case, they do not show his location at the scene of crime. Noticeably, one of the co-accused Ravi was granted bail by this Court. In the said decision delivered on 05.01.2023, while granting bail, Court has observed that Ravi was not named in the FIR; none of the witnesses Aman, Inam, Sanjeev Chauhan, father of the deceased and eye witness Harsh had named him as somebody who was at the spot. The limited reference pointing to Ravi was the statement of Inam recorded 06 days after his initial statement, wherein he added what had been apparently told to him by Mayur and the addition was that while Inam was taking him to hospital, he heard Mayur stating that he had heard the assailants saying that they were going to Ravi's office thereafter. From a reading of the decision, it emerges that the only distinguishable factor in the present case are the statements of Sanjeev Chauhan and Raman under Section 161 Cr.P.C. As against these statements,



there is a statement of Harsh under Section 164 Cr.P.C., who is the eye witness and did not name the applicant.

16. The Supreme Court in ***Ram Govind Upadhyay v. Sudarshan Singh and Others, (2002) 3 SCC 598***, has enunciated the guiding principles while considering application for grant of bail and held that amongst factors such as nature of accusations, severity of the punishment, reasonable apprehension of the accused absconding or tampering with evidence, frivolity in prosecution should also be considered. It was observed that element of genuineness will have to be considered at the time of considering the application for grant of bail and in the event of there being some doubt as to the genuineness of the prosecution case, in the normal course of events, accused will be entitled to bail. Emphasis on considering all these factors cumulatively was also laid by the Supreme Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee and Another, (2010) 14 SCC 496***. No doubt, the allegations are serious, however, in ***Prabhakar Tewari v. State of Uttar Pradesh and Another, (2020) 11 SCC 648***, the Supreme Court observed that gravity and seriousness of the charges cannot be a singular ground to deny the prayer for bail and a holistic view has to be taken of all the facts and circumstances.

17. Investigation is complete and Charge sheet has been filed. Till date, charges have not been framed by the Trial Court, awaiting the FSL report. As in the case of co-accused Ravi, applicant's presence has not so far been shown on the scene of crime and thus there is no allegation that he fired at the deceased. Applicant can thus, at best, be brought under Sections 120B/34 IPC at the end of the trial. Previous involvement of the applicant is alleged to be in an incident in case FIR No. 214/2022, in which he is on bail. It is not the case of the prosecution that the applicant is a flight risk.



Applicant is in judicial custody since 11.02.2022, as per the Nominal Roll. It has been held in a catena of judgments that bail jurisprudence attempts to bridge the gap between personal liberty of an accused and ensure that social security remains intact. Supreme Court has repeatedly held that it is the duty of the Constitutional Courts to ensure that there is no arbitrary deprivation of personal liberty and that bail is the rule and jail is an exception. Bail is an intricate balance between personal liberty of an individual and public law and order. Looking at the stage of trial, it is not likely to conclude soon and applicant cannot remain in judicial custody indefinitely.

18. In view of the aforesaid facts and circumstances, in my view, applicant has made out a case for grant of bail. Consequently, applicant is directed to be released on bail on furnishing a personal bond in the sum of Rs.1,50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court and further subject to the following conditions:

- (1) Applicant will not leave the country without prior permission of the Trial Court;
- (2) He shall furnish his permanent residential address to the IO and shall intimate the Court by way of an affidavit and the IO regarding any change in the residential address;
- (3) He shall provide his mobile number to the IO concerned and keep the same active at all times and the mobile number shall not be changed without prior intimation to the IO;
- (4) He shall appear before the Trial Court, as and when the matter is taken up for hearing;
- (5) He shall not indulge in any criminal activity and/or contact any prosecution witness or member of the deceased's family; and



(6) He shall report to the IO at PS: Laxmi Nagar, once in every month with prior intimation of the date and time.

19. Needless to state, any observation touching the merits of the case is purely for the purpose of deciding the present application and shall not be construed as an expression on merits of the case.

20. Application is allowed and stands disposed of.

21. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

APRIL 08, 2024/shivam