



2024:DHC:2131

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

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Judgment delivered on: 18.03.2024

+ **BAIL APPLN. 3017/2023**

MOHD. RAFI

..... Applicant

versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Abhir Datt, Mr. Kunal Sharma, Mr. Debayan Gangopadhyay and Mr. Yash Punjabi, Advs.

For the Respondent : Mr. Utkarsh, APP for the State with SI C. S. Yogi, PS Khyala and Insp. Arvind Kumar, South East District.

CORAM**HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') for grant of regular bail in FIR No. 565/2021 dated 25.06.2021, for offences under Sections 302/307/34 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959, registered at Police Station Khyala. Chargesheet has been filed against the applicant under Sections 34/120B/302/307 of the IPC and Sections 25/27 of the Arms Act, 1959.

2. On 25.06.2021, a PCR call was received from Balaji Hospital

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BAIL APPLN. 3017/2023**Page 1 of 8**



regarding the deceased, namely, Vinod Bhati having been brought to the Hospital with multiple bullet injuries.

3. The present FIR was registered on the basis of the statement of the complainant, namely, Manoj Bhati, who is the brother of the deceased. It was stated that the deceased operated his office from the ground floor of the house. It was stated that on 25.06.2021, around noon, the complainant's nephew was standing in the balcony on the 2nd Floor when the complainant heard him screaming that "Niche Chacha Ki ladaai ho gai hai". On hearing this, the complainant along with his brother Giriraj, rushed to the ground floor to find that the door was locked. Thereafter, they went to the balcony and saw co-accused persons, namely, Sohail (nephew of the applicant), Aamir Khan, Babu and four unknown persons coming out of the office of the deceased with pistols in their hands. He stated that one of the unknown persons fired at him and Giriraj.

4. He further stated that his nephew told him that the assailants had also fired towards him before going inside the office of the deceased, however, the bullet had hit the ceiling, whereafter, shooting of bullets could be heard. It was stated that they took assistance of someone to open the latch of the door and went to the office of the deceased and found the deceased lying on the floor drenched in blood with bullet shells scattered beside him. It was also stated that they noticed that the hard disk of the CCTV System had been taken away by the assailants. He stated that his brothers Balraj and Giriraj took the deceased to the Balaji Hospital where he was declared to be dead on arrival.



5. It is the prosecution's case that during the course of the investigation, one of the co-accused persons named in the FIR, that is, Aamir Khan *alias* Bhura was arrested on 26.06.2021. It is alleged that co-accused Aamir Khan disclosed that the applicant, co-accused Sohail and others had been planning to kill the deceased since a long time to exact revenge as the deceased had allegedly killed Riaz *alias* Pappu (the brother of the applicant and uncle of co-accused Sohail) in the year 2018. An FIR, being FIR No.322/2018, was registered for offences under Sections 302/307/34 of the IPC in regards to the murder of Riaz *alias* Pappu, however, the deceased was acquitted in the said case by order dated 01.04.2021.

6. It is alleged that the applicant was thereafter arrested in the present case on 28.06.2021. It is alleged that the applicant himself disclosed that he had financed the crime since he was the one who had received the sum of ₹50 lakhs to turn hostile and compromise the case in FIR No.322/2018.

7. It is also alleged that the applicant along with co-accused Ravinder *alias* Pahalwan made the arrangement for the stay of all accused persons for six to seven days before the commission of the offence, at the residence of co-accused Ajay.

8. Co-accused Ajay was arrested on 02.07.2021 at the instance of the applicant. Ajay in his disclosure statement stated that the applicant along with co-accused Ravinder *alias* Pahalwan had requested him to provide the top floor of his residence for the stay of co-accused persons to enable them to take revenge from the deceased.



9. The learned counsel for the applicant submitted that the applicant is a law abiding citizen and has been falsely implicated in the present case.

10. He submitted that the applicant was not named in the present FIR. He further submitted that the applicant was implicated merely on the basis of the disclosure statements of the co-accused Aamir *alias* Bhura, and no recovery was effectuated from him.

11. He submitted that the disclosure statements of co-accused persons have no evidentiary value unless they have been supported by independent evidence to corroborate the allegations levelled against the accused person.

12. He submitted that, even otherwise, the disclosure statement of the co-accused Aamir is clear on the fact that it was co-accused Sohail who had planned the murder after the deceased was released from jail.

13. He submitted that co-accused Ajay has already been granted bail by the learned Trial Court by order dated 06.01.2022.

14. He submitted that it is an admitted case of the prosecution that the applicant was not in Delhi on the day of the incident and therefore the limited role alleged against the applicant is that of a conspirator.

15. He submitted that the allegation that the applicant had financed the offence as he had taken 50 lakhs to turn hostile in FIR No.322/2018 is unsubstantiated and no formal complaint has been lodged against the applicant in this regard.

16. He further submitted that there is no mention of any amount having been paid to the applicant to turn hostile in the statements of the



family members of the deceased under Section 161 of the CrPC.

17. He contended that while it is alleged in the Status Report that the applicant switched off his old mobile phone and started using a new one since the date of the incident, however, the said allegation finds no mention in the chargesheet and has further not been corroborated by any evidence.

18. The learned Additional Public Prosecutor for the State opposed the grant of any relief to the applicant. He submitted that the applicant is the main conspirator in the present case.

19. He submitted that the applicant had strong motive to take revenge from the deceased as the deceased had killed the applicant's brother.

20. He further submitted that the crime in the present case is grave in nature as the accused persons had conspired and planned to kill the deceased. He submits that the offence, as alleged against the accused persons, attracts a maximum punishment of death.

21. He submitted that the applicant financed all the resources used in committing the murder of the deceased, including the fire arms, and a specific role as the main conspirator has been alleged against the applicant.

22. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail;



reasonable apprehension of the witnesses being threatened; etc.

23. It has not been alleged that the applicant was one of the assailants who had attacked the deceased. It is relevant to note that the role attributed to the applicant is limited to that of a conspirator who had planned and financed the present crime due to some prior rivalry. However, it is pertinent to note that, at this stage, *prima facie* no money trail connecting the applicant to the purchase of any weapons used in the commission of the crime has been established by the prosecution by way of evidence.

24. It is alleged that the applicant had taken a sum of ₹50 lakhs from the family of the victim in order to turn hostile in FIR No.322/2018 and the said money was used to purchase the weapons used in the present FIR. The statement of the family of the victim has already been recorded, who have not stated that they paid any money to the applicant. Moreover, as noted above, the prosecution, at this stage, has not been able to show any link or trail which would point towards the purchase of the weapons by the applicant.

25. It has also been alleged that the applicant arranged the accommodation for the accused persons at the residence of co-accused Ajay. In this regard, it is relevant to note that co-accused Ajay has himself been granted bail by the learned Trial Court.

26. The case of the prosecution, at this stage, *prima facie*, seems to be based solely on the disclosure statements of the co-accused persons. The veracity of the said evidence is to be tested during the course of the trial.



27. At this stage, the possibility of the applicant not being actively involved in the commission of the alleged offence cannot be ruled out.

28. It is also not denied that the applicant has no antecedents and is in custody since 31.08.2022. Chargesheet has also already been filed in the present case. In view of the same, this Court is of the opinion that no purpose would be served by keeping the applicant in further custody.

29. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

30. Considering the aforesaid discussion, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. He shall under no circumstance leave the boundaries of Delhi without the permission of the learned Trial Court;
- c. He shall appear before the learned Trial Court as and when directed;
- d. He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. He shall, upon his release, give his mobile number to the



2024:DHC:2131



concerned IO/SHO and shall keep his mobile phone switched on at all times.

31. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

32. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

33. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MARCH 18, 2024
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Page 8 of 8