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

+ **BAIL APPLN. 3094/2023**

GAURAV @ GORI

..... Petitioner

Through: Mr. Hasim Alam, Adv.

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr. Utkarsh, APP for the
State

Inspector Lalit Chauhan,
PS- Gulabi Bagh

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **01.02.2024**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in FIR No. 268/2020 dated 11.12.2020, registered at Police Station Gulabi Bagh for offences punishable under Sections 302/392/395/396/120-B/34 of the Indian Penal Code, 1860 and Sections 25/27 of the Arms Act, 1959.

2. It is alleged that on 11.12.2020, a PCR call was received that the victim with a bullet injury is lying near the Metro Pillar No. 142, Pratap Nagar. On being taken to the hospital, the victim was declared 'brought dead'.

3. It is claimed that on perusal of the CCTV footage, one motorcycle was found to be driven in suspicious circumstances. The same was traced and was found to be registered in the name of one, Pushpa. During the course of investigation, Pushpa was questioned, who disclosed that the said bike is driven by one, Harish. It is alleged that Harish, on being interrogated, disclosed that he along with three other assailants including the applicant, had followed the victim on two motorcycles.

4. The accused persons then tried to snatch the bag from the



victim and on his resistance, he was shot.

5. It is disclosed by the co-accused Harish that the shot was fired by the applicant. It was further disclosed that there were two other persons involved in the commission of the alleged crime. It was also disclosed that one, Ishwar, who is also accused in the present FIR, had given information about the deceased victim, carrying the cash.

6. The learned counsel for the applicant submits that the only evidence against the applicant, at this stage, is the disclosure statement made by the co-accused, Harish.

7. He submits that the statement given by the co-accused is not admissible. He submits that the applicant is not seen in the CCTV footage and the sole eye witness, of the alleged incident has also failed to identify the applicant.

8. He submits that the CCTV footage doesn't show the incident of firing of the shot and role of the shooter cannot be fastened on the present applicant.

9. He further submits that chargesheet has already been filed. He submits that the applicant has no criminal antecedents and is under incarceration since 25.12.2020.

10. The learned Additional Public Prosecutor for the State submits that the applicant is involved in a heinous crime of murder and the evidence collected thus far, supports the case of prosecution.

11. He submits that the CDR location clearly indicates that the applicant was, at the time of the alleged incident, present at the place of the crime.

12. He further submits that the applicant was the one who has fired the shot at the deceased victim.

13. I have heard learned counsel for the parties.



14. The applicant is alleged to have been riding on a motorcycle, which allegedly was not seen in the CCTV footage. The case of the prosecution is that the accused persons were identified when one motorcycle was found to be driven in suspicious circumstances. The co-accused Harish is alleged to be riding the said motorcycle. The alleged pistol, as per the prosecution, was recovered at the instance of the co-accused Harish. On being asked, it was submitted by the learned Additional Public Prosecutor for the State on instructions from the Investigating Officer, that the FSL Report in regard to the said pistol, is still pending.

15. It is settled law that the Court cannot conduct a mini trial at the time of considering an application for bail. However, for the limited purpose of ascertaining if there exists a *prima facie* case in favour of the applicant warranting grant of bail, the material can be looked into for indicating the reasons thereof. The Hon'ble Supreme Court in ***Lt. Col. Prasad Shrikant Purohit v. State of Maharashtra: (2018) 11 SCC 458***, held as under:

“29. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.



(c) *Prima facie* satisfaction of the court in support of the charge.”

16. At this stage, the only material against the present applicant is the disclosure statement of the co-accused Harish and his alleged presence at the crime spot as per the CDR. It is for the learned Trial Court to assess the evidentiary value of this material at the appropriate stage.

17. It is not denied that the recovery of the alleged weapon was not from the present applicant, but from the co-accused, and at this stage there is no material on record to, *prima facie*, show the active involvement of the applicant. It is the case of the prosecution that there was a public eye-witness who has seen the incident. It is also not denied that the said eye-witness had not identified the applicant. CCTV footage does not show the presence of the applicant.

18. In case, the Court finds some doubt as to the genuineness of the prosecution, the accused is entitled for the grant of bail.

19. Any apprehension of the witnesses being tampered with; or any likelihood of applicant absconding; or fleeing if released on bail, can be taken care of by putting appropriate conditions.

20. The applicant is in custody since 25.12.2020 and the investigation in relation to the applicant is already complete, and the chargesheet has already been filed. Considering the aforesaid facts, I am of the opinion that no useful purpose would be served by keeping the applicant in further incarceration. The applicant is a young boy of 22 years of age, with no criminal antecedents, and belongs to the poor strata of society. Prolonged incarceration is bound to cause inexorable harm to the mental well being of an impressionable mind of such a young individual.

21. In view of the above, the applicant is directed to be



released on bail on furnishing a personal bond for a sum of ₹20,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM on the following conditions:

- a. He shall join and cooperate in further investigation as and when directed by the concerned Investigating Officer;
 - b. He shall under not leave the boundaries of the National Capital Region without informing the Investigating Officer;
 - c. He shall appear before the learned Trial Court on every date of hearing;
 - d. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
 - e. 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.
22. 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 way of seeking cancellation of bail.
23. 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.
24. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

FEBRUARY 1, 2024 / “SS”