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

+ **BAIL APPLN. 3104/2023**

SHADAB @ BABLU

.....Petitioner

Through: Ms. Smriti Sinha, Mr. Satyam
Thareja, Ms. Shriyanshi Pathak,
Mr. Yash Hari Dixit, Mr. Pratyaksh
and Ms. Sara Shrawani,
Advocates.

versus

STATE

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State
alongwith SI Akash, Insp.
Narendera, & Inspector Mousam
Ghani, P.S. Bhajanpura.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
23.08.2024

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1. This is a petition under Section 439 of Code of Criminal Procedure seeking grant of regular bail in FIR No. 689/2017, registered at P.S. Bhajanpura for the offences punishable under Sections 302/392/394/34 IPC and Section 25 Arms Act.

2. Learned counsel for the petitioner submits that the petitioner was arrested in November, 2017. He contends that there is no evidence which implicates the petitioner except for recovery of a *katta* and empty shells from the petitioner's house. As regards the *katta*, there is no ballistic report which has been provided by the prosecution in relation to the matching empty shell to the *katta* or what was recovered from the scene of the crime.



3. In this regard, clarification sought from the learned APP who has shown the ballistic report in relation to another FIR No. 660/2017 P.S. Jafrabad in which the petitioner was arrested and charged for the offences under Section 25/27 Arms Act; the ballistic report is related to weapon recovered in that FIR.

4. Learned APP states that the recovery which implicates the petitioner is that of the laptop with charger of the deceased from the petitioner's house which was duly identified in the TIP proceedings. Laptop was recovered in the FIR No. 660/2017 and the charger was recovered in the present FIR; both were duly identified by the brother of the deceased.

5. Counsel for petitioner further states that 2 other co-accused having been declared as CCL, have been acquitted by Juvenile Justice Board. Further, regarding the previous involvements as stated by the APP, he has been acquitted in 4 matters and is not in custody in any other matter. Further, 20 out of 29 witnesses have already been examined.

6. Case of the prosecution is based on receipt of an information on 17th November 2017 regarding deceased having been brought dead at JPC Hospital. Pursuant to registration of the FIR and handing over of body to Sunil, the brother of the deceased, it was stated by Sunil that the deceased was taking coaching classes in Mukherjee Nagar and used to stay in house of brother-in-law (*jija*).

7. Subsequently, petitioner-accused along with Vivek Mishra was arrested in FIR No.660/2017 under Sections 25/54/59 Arms Act & Sections 411/34 IPC PS Jafrabad, and as per prosecution disclosed their involvement in this FIR No.689 12017 PS Bhajanpura. Allegation on petitioner-accused is through this disclosure, aside from recovery of laptop charger seized from petitioner's house.



8. Petitioner is in custody for a period of about 6 years and 9 months, since 22nd November 2017.

9. The Hon'ble Supreme Court in ***Javed Gulam Nabi Shaikh v. State of Maharashtra***, 2024 SCC OnLine SC 1693, observed as follows:

“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.”

10. In the facts and circumstances, considering that the trial in the matter is likely to take some time, and charges are yet to be proved, it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The



petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.

- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner will mark presence physically/virtually before the concerned I.O. every first and third Friday between 4 – 5 p.m.
- vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

11. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

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

13. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

14. Order be uploaded on the website of this Court.

ANISH DAYAL, J

AUGUST 23, 2024/sm