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

+ **BAIL APPLN. 3189/2023**

AFZAL AHMED

.....Petitioner

Through: Mr. Aditya Aggarwal, Mr. Ankit
Mutreja & Ms. Pooja Roay,
Advocates

versus

STATE

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State
SI Neeraj Chahal, PS Seelampur

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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31.07.2024

1. Pursuant to previous order dated 24th July 2024, counsel for petitioner has filed additional documents including testimonies of PW-5 and PW-15 the purported eye-witnesses.
2. It is stated that in this FIR No. 582/2017 PS Seelampur, petitioner has been arrested since July 2017 and as per the Nominal Roll, has already spent about 4 ½ years in custody. Interim bail was granted on various occasions, amounting to a total of 2 years 5 months. There is no other previous involvement. In FIR No.534/2022, which was registered during the time petitioner was on interim bail, he secured bail by order dated 16th January 2023 by the Trial Court, as also the co-accused Aziz. The said orders have been placed on record.
3. Additionally, petitioner's counsel highlights that all other accused in this FIR have been granted bail, therefore seeks bail on parity.



4. As regards trial, it is confirmed that out of total 42 witnesses arrayed, 26 witnesses have been examined including all material witnesses.
5. APP has refuted submissions of counsel for petitioner and pointed out that petitioner is accused in FIR No.534/2022 under Section 308/34 IPC PS Seelampur on basis of complaint of one Adil where he stated that he and Umar were beaten up by 4 accused including petitioner herein. He further relies upon statement of eye-witness Kanhaiya, PW-15 who identified petitioner in the Court.
6. Petitioner's counsel, however, points to FIR where it is stated that the SI had gone to spot of crime where he did not find any eye-witness, and therefore the two eye-witnesses seem to have been introduced by the police at a later stage.
7. It is contended by petitioner's counsel that the identification by the eye-witnesses on which the prosecution is relying upon is based on the assailant being shown to the eye-witnesses in the police station and thereafter, their statements were recorded.
8. Further, petitioner's counsel points out to statement of PW-15 where he stated that petitioner and other co-accused were shown in police station as assailants and after that his statement was recorded, which dilutes the credibility of the identification in court.
9. Further, testimony of PW-5 is relied upon by APP to say that petitioner fired weapon on him; counsel for petitioner however points out that in cross examination, PW-5 says that he saw them from behind.
10. However, taking into account contentions by petitioner's counsel denting the case of the prosecution, and the fact that accused is in custody for more than 4 ½ years, trial will take some time to conclude, and co-accused have been granted bail who are allegedly involved in the same incident, this



Court deems it fit to grant bail to the petitioner.

11. The Hon'ble Supreme Court in **Satender Kumar Antil v. CBI**, (2022)

10 SCC 51, observed as follows:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”

(emphasis added)

12. The Hon'ble Supreme Court also noted the observations made by Krishna Iyer, J., in **Gudikanti Narasimhulu v. Public Prosecutor**, (1978) 1

SCC 240, as under:

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law.” The last four words of Article 21 are the life of that human right.”

(emphasis added)

13. The Hon'ble Supreme Court, more recently, 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.”

(emphasis added)

14. 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.
- 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 before the concerned I.O. every first and third Friday of every month between 4-5pm.
- 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.



15. 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.
16. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
17. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

ANISH DAYAL, J

JULY 31, 2024/sm