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

+ **BAIL APPLN. 3197/2023**

VIKAS

..... Petitioner

Through: Mr. B.D. Sharma, Adv.

versus

THE STATE GNCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State.

With Insp. Deepak, P.S. Sonia Vihar.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

24.04.2024

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1. The present application under Section 439 read with Section 482 of the Cr.P.C. seeks regular bail in case FIR No. 284/2020 under Sections 302/120B/34 IPC & Sections 25/27 of the Arms Act, registered at P.S. Sonia Vihar.

2. The case of the prosecution, as per the status report dated 24.04.2024 authored by Inspector Sanjay Prakash, SHO/PS Sonia Vihar, taken on record, is as under:-

“1. Brief facts of the case are that on 15.08.2020 at 10:34 PM, a PCR call vide GD No. 70-A i.e. G-1/156/8, Sonia Vihar, yahan ek aadmi ko goli lag gayi hai was received at PS Sonia Vihar, and the same was marked to Insp. Hiralal who had reached at the spot i.e. road near G-1/156, Sonia Vihar, Delhi and there was blood present on the road and it came to know that fire incident has been occurred at that place. The injured was shifted to JPC hospital by PCR van. IO had reached at JPC hospital where injured Dinesh was declared brought dead vide MLC No. 2794. Witness Vikash Bhati S/ Sh. Ishwar Singh R/o G-1/156, Gali No.8, Sonia vihar, Delhi (Brother of deceased) was found present in the hospital and he told that he is the eye witness of the incident. His statement was recorded. In his statement, he stated that on 15.08.20 at



about 10.15 PM, he was present at Angel Fast Food, G-1 Block, Sonia Vihar with his friend Sonu Pal. He heard the calling sound from his brother Dinesh Bhati. He reached towards Som Bazar and found some persons are beating his brother Dinesh Bhati. He saw Vikash (the present petitioner) and Aarush @ Bunty are holding his brother. Ajay @ Satvir hit his brother with a brick after that Aakash fired two-three times with a desi katta on his brother, Arun was also present at the spot. On raising the alarm, all persons escaped from the spot. There was enmity between his brother Dinesh Bhati and Aakash as his brother caused the injury to Aakash with a blade before 5-6 years. On basis of the statement given by complainant Vikas Bhati, the present case was got registered and investigation was taken up.

2. During investigation the spot was got inspected and photographed by crime team. Thereafter, the accused Aakash and Ajay @ Satveer was arrested at Anand Vihar bus stop on 16.08.2020. His disclosure statement was recorded. Aakash disclosed that his brother Arun hatched the conspiracy with him, brother Vikas (the present petitioner), Ajay @ Satvir and Aarush @ Bunty to eliminate Dinesh Bhati as there was quarrel between Arun and Dinesh Bhati in Tihar Jail in year 2014. Other accused Vikash (the present petitioner) and Aarush @ Bunty was also arrested. The desi katta used by accused Ajay @ Satveer was recovered on his instance from his home. The brick used by him to hit the deceased on head was also recovered on his instance near the spot. The other desi katta used by Aakash to fire three times on deceased was recovered from the accused Vikas (the present petitioner). The surgical blade used by accused Aarush @ Bunty was recovered on his instance near the spot.

3. That all the exhibits i.e. the blood found present at the spot, blood sample of deceased along with the recovered blood stained brick (recovered on the instance of accused Ajay @ satveer) and recovered desi katta were sent to FSL Rohini, Delhi. Result has been received and blood of deceased has been matched with the blood present on brick and spot.

4. That the investigation reveals that Arun hatched the conspiracy with his brother Aakash and Vikash (the present petitioner) and Ajay @ Satvir and Aarush a Bunty to eliminate Dinesh Bhati as there was quarrel between Arun and Dinesh Bhati in Tihar Jail in year 2014. Arun and his brother had apprehension that Dinesh Bhati @ Deena can kill them and accordingly to his plan they killed Dinesh Bhati @ Deena with fire arms and he was present at the spot at the time of firing on deceased Dinesh Bhati. After completion of the investigation, charge



sheet against the accused Aakash, Vikas (the present petitioner), Ajay @ Satveer and Aarush @ Bunty was prepared u/s 302/120B/34 IPC and 25/27 A. Act and filed in the court. Accused Arun was absconding and he was also arrested in the case on 03.01.21 and the FSL result w.r.t. biological was also obtained and the DNA profile of deceased and blood stained brick (recovered on the instance of accused Ajay @ Satveer) matched. After that the charge sheet against him also filed in the court through supplementary charge sheet.

5. That the charges u/s 302/149 IPC have already been framed against the present petitioner in the court of Sh. Devender Kumar, Ld. ASJ, Karkardooma courts, Delhi and the case is still pending at the stage of Prosecution Evidence and fixed for NDOH i.e. 25.04.2024. At this stage 07 witnesses out of total 18 witnesses have been examined.

6. It is pertinent to mention here that present petitioner is also involved in two another cases i.e. (1) FIR No. 164/17 U/s 186/353/307/34 IPC, PS Sonia Vihar and (2) FIR No. 371/2017, U/s 33 Delhi Excise Act, PS Sonia Vihar, Delhi.”

3. Learned counsel appearing on behalf of the applicant submits that out of the eye witnesses cited by the prosecution in the chargesheet, Sonu, who has been examined as PW-2, has been declared as hostile and did not support the case of the prosecution. Learned counsel appearing on behalf of the applicant submits that the case of the prosecution is that the statement on the basis of which the FIR was registered by PW-1 Vikash Bhati (brother of the deceased) was recorded at the hospital, however, in his testimony before the learned Trial Court, he had stated that he gave his statement in the police station.

4. Learned counsel appearing on behalf of the applicant further submits that during the testimony of the witnesses from the Crime Team, who reached at the spot, discrepancies with regard to the presence of motorcycle and cartridges have also come on record to demonstrate that the articles were planted. It is submitted that the public witnesses have been examined and there is no apprehension of the present applicant tampering with any



evidence and that he is in custody since 17.08.2020.

5. *Per contra*, learned APP, on instructions of the Investigating Officer, submits that brother of the deceased (author of the FIR) has been examined as PW-1 before the learned Trial Court and has supported the case of the prosecution. It is submitted that the firearm used by co-accused Akash for shooting at the deceased has been recovered from the present applicant. It is further submitted that the case of prosecution was that the present applicant along with the co-accused persons had hatched a conspiracy to kill the deceased on account of previous rivalry between the deceased and co-accused

6. Heard learned counsel for the parties and perused the record.

7. PW-1 (author of the FIR) has been examined before the learned Trial Court, who supported the case of the prosecution. The testimony of the said witnesses reflects that he was present at the spot and had witnessed the alleged incident. The discrepancy as pointed out by learned counsel for the applicant is a matter of trial and cannot be looked at for the present bail application. The case of the prosecution has been supported by the aforesaid eye witnesses as pointed out hereinabove. It is further noted that the applicant has been involved in a previous FIR bearing No. 164/2017 under Sections 186/353/307/34 of the IPC, registered at P.S. Sonia Vihar.

8. In totality of the facts and circumstances, the application is dismissed and disposed of.

9. Needless to state that nothing stated hereinabove is an opinion on the merits of the case and only for the purpose of present bail application.

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



11. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

APRIL 24, 2024/nk

Click here to check corrigendum, if any