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

+ **BAIL APPLN. 3223/2023**

MOHD. ASIF

..... Petitioner

Through: **Mr. Vineet Jain, Adv.**

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: **Mr. Hemant Mehla, APP for State
with Insp. Kuldeep Singh PS Sarai
Rohilla**

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

05.01.2024

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1. The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in connection with FIR No. 294/2020 under Section 302/34 IPC read with Section 25/27 of Arms Act registered at PS Sarai Rohilla.
2. The case of the prosecution is that on 27.08.2020 the complainant, namely, Mohd. Mehtab made a complaint that on hearing some commotion, he came out of his house and saw the accused persons having some arguments with the deceased. After that the accused persons fired at the deceased as a result of which the deceased expired.
3. The learned counsel for the petitioner invites the attention of the Court to the FIR to contend that a gunshot injury has been attributed to co-accused Mehboob @ Sanu. Further, the case of the prosecution is that it is the co-accused Nizam and Salman who had held the hands of the deceased while co-accused Mehboob @ Sanu had put the pistol on the temple of the deceased and fired. The only allegation against the petitioner is that he was also present at the place of incident and he had fired in the air but according



to the learned counsel, no recovery of any weapon was made from the petitioner.

4. He submits that the prosecution has cited two eye witnesses, namely, Mohd. Mehtab who was examined as PW18, as well as, the wife of the deceased namely, Ms. Asgari Khatoon, who was examined as PW1.

5. Inviting attention of the Court to the testimony of Mohd. Mehtab/PW18, he submits that the said witness has not supported the case of the prosecution and he turned hostile. He was also cross examined by the learned APP but nothing material could be elicited from him in support of the prosecution version.

6. In so far as wife (PW1) of the deceased is concerned, he submits that she has been introduced as an eye witness subsequently and she is an interested witness. Referring to the testimony of PW1, he submits that PW1 has testified that she alongwith her brother-in-law namely, Imroz, had taken the deceased to the hospital and in the process her clothes got soaked in blood. According to him, the said blood soaked clothes were never seized by the Police in the present case.

7. He further refers to the chargesheet where it has been recorded that when a police official went to the hospital he did not find any eye witness. According to the learned counsel this probabalize the defence of the petitioner that the wife of the deceased i.e. PW1 was not present in the hospital nor she had taken the deceased to the hospital.

8. Referring to the testimony of PW1, he submits that though PW1 has testified that before preparation of the site plan enquiries were made from her but surprisingly the site plan does not bear the signatures of the said witness i.e. PW1. He submits that the pistol from which the petitioner



allegedly fired in the air was not recovered from him.

9. He further submits that the petitioner is in custody since 15.12.2020 and his custody is no more required as the investigation is complete and the trial is underway. Further, all the public witnesses have been examined and there is no possibility of the petitioner influencing the public witnesses in the event he is enlarged on bail. According to the learned counsel the antecedents of the petitioner are clean. He thus, urges the Court that the petitioner be released on bail.

10. *Per contra*, learned APP for the State has argued on the lines of the status report.

11. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the material on record.

12. As per the prosecution version the fatal gunshot injury has been attributed to co-accused Mehboob @ Sanu. Further, the case of the prosecution is that co-accused Nizam and Salman had held the hands of the deceased while co-accused Mehboob @ Sanu had fired the gunshot. The only overt act attributed to the petitioner is that he was also present at the place of incident and he fired in the air. However, on a query posed by the Court, the learned APP on instructions from the IO, who is present in Court, fairly states that no recovery of weapon was affected from the petitioner.

13. Undisputedly, one of the eye-witnesses namely, Mohd. Mehtab/PW18 turned hostile and did not support the case of the prosecution. Another eye-witness namely, Ms. Asgari Khatoon, who is the wife of the deceased and was examined as PW1 has testified that she along with her brother-in-law had taken the deceased to the hospital and in the process her clothes got soaked in blood, but intriguingly, the blood soaked clothes were not seized



by the police. Further, in the chargesheet it has been recorded that when the IO/police official went to the hospital he did not find any eye-witness present there.

14. Deceased's wife/PW1 also stated in her examination-in-chief that before preparation of the site plan enquiries were made from her but surprisingly the site plan does not bear the signatures of the said witness.

15. Though the probative value of the evidence and the credibility of the witnesses will be seen at the stage of trial but the circumstances noted above definitely raises doubt as regard the complicity of the petitioner and truthfulness of the prosecution version and thereby furnish the ground for granting bail to the petitioner.

16. That apart, it is not in dispute that the petitioner has clean antecedents. The petitioner is also permanent resident of Delhi, therefore, he is not a flight risk. Further, all the material witnesses have been examined, thus, there is no possibility of the petitioner influencing the witnesses in the event he is enlarged on bail.

17. The petitioner is in custody for the past more than three years, the investigation is complete and the trial is underway, therefore, the custody of the petitioner is no more required. Even otherwise, the circumstances of the case as noted above, does not warrant continuation of petitioner is custody to await the outcome of trial which is not likely to be concluded anytime soon given the fact that the prosecution has cited as many as 34 witnesses and till date only 20 witnesses have been examined.

18. Considering the aforesaid facts and circumstances in entirety, I am of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a



Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall not leave the Delhi/NCR without prior permission of the Court.
 - b) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - c) Petitioner shall provide mobile numbers to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
 - d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
19. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.
20. The present bail petition is disposed of.
21. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
22. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

JANUARY 5, 2024
N.S. ASWAL