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

+ **BAIL APPLN. 3248/2023**

VIKAS KUMAR Applicant
Through: Mr. K. B. B. Singh and
Mr. Rohit, Advs.

versus

THE STATE NCT OF DELHI Respondent
Through: Mr. Utkarsh, APP for the
State with SI Pawan, PS
Mukherjee Nagar.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
13.03.2024

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1. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in FIR No.533/2019, dated 07.11.2019, for offences under Sections 307/34 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959, registered at PS Mukherjee Nagar. Chargesheet has been filed in the present case.
2. The brief facts of the case of the prosecution are as follows:

2.1 On 06.11.2019, a PCR call was received regarding the incident. The police officials on reaching the spot of crime found two bikes, one of which is alleged to be belonging to the assailants and the other to the complainant.

2.2 It is alleged that the officers of Delhi Armed Police ('DAP') were present on the spot of incident and

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informed that the injured persons, that is, the complainant and his father, had been taken to the hospital.

- 2.3 It is alleged that the officers of DAP had nabbed the accused persons, including the applicant. It is alleged that one bag containing two country made pistols, empty cartridges and 4 live cartridges was recovered from the applicant.
- 2.4 At the hospital, the injured persons were found to be under treatment. The MLC of the complainant's father indicated that his injury was dangerous and he had suffered physical assault, pellet injury, multiple pellet marks over his right upper back and multiple abrasions. The nature of the complainant's injury was opined as simple.
- 2.5 On the next day, FIR No. 533/2019 was lodged on the basis of the complainant's statement. It is alleged that the applicant's sister had married the brother of the complainant due to which the applicant had a grudge against the family of the complainant. It is alleged that the applicant had given life threats to the father of the complainant at an earlier occasion, but the same were dismissed by the complainant and his family. It is further alleged that on 06.11.2019, around 11:30 pm, the complainant along with his father was going from their fruit stall to a garbage store on their bike. It is alleged that when they reached near Shani Mandir, the accused persons came on a bike and shot the father of



the complainant on his back.

2.6 It is alleged that the complainant saw the pillion rider on the said bike holding a country made pistol in his hand which he put in the black bag. It is alleged that the complainant chased the assailants and one more shot was fired which narrowly missed the complainant. It is alleged that the complainant's father managed to grab the pillion rider causing both bikes to unbalance and fall on the ground near the gate of NPL.

2.7 It is alleged that the victims, with the help of staff on duty at the gate, nabbed both the assailants and identified the applicant and co-accused Mukesh.

2.8 The applicant along with the co-accused person was arrested on 07.11.2019 and has remained in custody since then, except for when he was released as per HPC guidelines during COVID.

3. The learned counsel for the applicant submits that the applicant is a respectable member of the society and has clean antecedents.

4. He submits that that the incident took place at 11:30 pm in the night and it is improbable, in such circumstances, for the complainant to have seen and identified that it was the applicant, who was the pillion rider, who shot his father.

5. He submits that it is the prosecution's case that the accused persons were arrested by on duty police officers, in front of the complainant and his father, in a public place, however, no public witness *qua* the incident has been listed in the chargesheet.



6. He further submits that the recovery of the weapons and cartridges effectuated from the applicant in the absence of public witnesses is also open to doubt.

7. He submits that despite a lapse of more than five years since the alleged incident, the FSL report or ballistic report is still not on record. He submits that there is a reasonable doubt as to whether the recovered weapons were even used in the commission of the offence.

8. He points out that the chargesheet in the present case was filed in January, 2020, despite which, the charges have not been framed in the present case yet. He submits that the delay in the commencement of trial in the present case is attributable to the State which keeps delaying the arguments on charge due to absence of the FSL Report.

9. He submits that co-accused Mukesh has been granted bail in the present case by this Court by order dated 03.07.2020, in Bail Appl. 1274/2020.

10. The learned Additional Public Prosecutor ('APP') strongly opposes the grant of bail to the applicant. He points out that the nature of the alleged offence is serious in nature.

11. He submits that the applicant is alleged to be the one who shot the father of the complainant and is thus the main assailant in the present case.

12. He submits that the applicant has been arrested by the on duty police officials on the spot.

13. He submits that the recovered country made pistol and



cartridges were sent to FSL Rohini and the result of the same is still awaited.

14. He submits that the co-accused was granted bail with the observation that he was only driving the vehicle and had not fired the shot which injured the complainant's father.

15. He submits that the applicant has a personal grudge against the complainant's family and there was a high possibility that if granted bail, the applicant would attack the family of the complainant and threaten the witnesses.

Analysis

16. The Hon'ble Supreme Court in the case of ***Ram Govind Upadhyay v. Sudarshan Singh And Others: (2002) 3 SCC 598***, has enunciated the following guiding principles for granting bail:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:



(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

17. In the case of ***State of Kerala v. Raneef : 2011(1) SCC 784***, the Hon’ble Apex Court emphasised that delay in trial is also a factor that has to be taken into consideration while deciding whether bail is to be granted. The relevant portion of the judgment is reproduced hereunder:

“In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail.”

18. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a



punishment. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time and is being delayed due to no fault of the applicant.

19. It is not disputed that no public witnesses have been listed in the chargesheet by the prosecution. In such a scenario, on the basis of the material relied upon by the prosecution, in the absence of public witnesses and FSL Report, the non-involvement of the applicant in the offence under Section 307 of the IPC, at this stage, when even the charge has not been framed against the applicant, *prima facie*, cannot be ruled out.

20. The veracity of the evidence, including the recoveries effectuated from the applicant, would be tested during the course of trial.

21. The applicant was arrested way back on 07.11.2019. Despite the period of more than four years having elapsed, the charges have not been framed. The prosecution has been taking adjournments before the learned Trial Court on the ground that the FSL report in relation to the recoveries made from the applicant is awaited. The applicant, in such circumstances, cannot be left at the mercy of the prosecution. The accused persons cannot be denied the bail only because the prosecution chose to file a chargesheet without proper evidence and has decided not to proceed with the arguments on charge.

22. On being pointedly asked, the learned Additional Public Prosecutor for the State has not been able to specify the time by when the FSL report would be ready and could be placed before the learned Trial Court. Such incarceration of the applicant, for



an endless period due to absence of FSL Report, falls foul of Article 21 of the Constitution of India.

23. It is not in doubt that the allegations levelled against the applicant are serious. It is, however, the case of prosecution itself that in the absence of any report from the FSL, the nature of evidence against the applicant is weak. Otherwise, the prosecution would not have sought adjournments before the learned Trial Court awaiting the FSL report.

24. The apprehension in regard to the evidence being tampered or there being a threat to the complainant is not without merits, however, the same cannot be the sole ground for denying the bail to the applicant. In the opinion of this Court, appropriate conditions can be put to allay the apprehension of there being any threat to the complainant or the evidence being tampered. Moreover, it is the duty of the State to protect every witness. It is also not alleged that the applicant, while on interim bail, threatened the witnesses or tampered with the evidence.

25. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. 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;
- b. He shall under no circumstance contact the victim's family members;



- c. He shall under no circumstance leave the boundaries of the National Capital Region without informing the concerned IO/SHO;
- d. He shall appear before the learned Trial Court as and when directed;
- e. He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. 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.

26. 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 filing an application seeking cancellation of bail.

27. 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.

28. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MARCH 13, 2024/ ssh