



2024:DHC:1095



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 13.02.2024***+ **BAIL APPLN. 3390/2023**

AJIT SINGH

..... Applicant

Through: Mr.Pritish Sabharwal,
Mr.Sanjeet Kumar, Mr.Sharad
Pandey, Mr.Shashank Shekhar,
Advs.

versus

STATE

.....Respondent

Through: Mr.Aman Usman with SI Vikas
Tomar.
Mr.Rajesh Kumar, Mr.Ravi
Rai, Advs. for the complainant
along with Rambir Singh.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This bail application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for the applicant to be released on bail in FIR no.227/2020 registered at Police Station: Wazirabad, North, Delhi, for offence under Sections 302/120B/34 of the Indian Penal Code, 1860 (in short, 'IPC') and Section 27 of the Arms Act, 1959 (in short 'Arms Act').

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Case of the prosecution:

2. It is the case of the prosecution that on 24.05.2020, vide DD no.45A, information was received regarding a shoot-out at Gali No. 13, Near Hanuman Chowk, Wazirabad. Upon inquiry, it was found that bullets had been fired at the house of the complainant, Sh.Rambir Singh by three unidentified persons on motorcycle(s). From the said spot, three empty cartridges were recovered and subsequently, FIR no.212/2020 was registered with Police Station Wazirabad, Delhi for offence under Sections 27/54/59 of the Arms Act.
3. Thereafter, on 01.06.2020, vide DD no.71A, another firing incident was reported from the same spot. It is stated that four assailants on two motorcycles fired continuous rounds of bullets on the deceased- Sh.Rakesh Chauhan, a shopkeeper who was stated to be the tenant of the complainant.
4. It is on the statement of the eye-witness Sh.Vishal Chauhan (that is, the brother of the injured) that the investigation was initiated for the above-mentioned offence, subsequent to which, FIR No.227/2020 was registered with Police Station: Wazirabad, Delhi for offence under Sections 302/120B/34 of the IPC and Section 27 of the Arms Act. Unfortunately the deceased succumbed to his injuries on 08.06.2020. It is stated that both the incidents pertain to the same conspiracy.
5. The prosecution further alleges that during the course of the investigation, and after analysing the CCTV footage of the area,

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it came to light that assailants had come on two motorcycles. One of the motorcycles was registered in the name of Ashish Kumar, who stated that the same was borrowed from him by his friend Rahul @ Badi Ankh and Vishal, while the second motorcycle was registered in the name of Akhtar Khan.

6. Imran @ Akhtar Khan and Honey @ Vishal were arrested in relation to the present FIR on 05.06.2020, and disclosed that they had fired upon a person on the direction of Hari Kishan in their village- Jagatpur. He also revealed that one Swift car was also used in the incident and was found to be in the possession of Sonu Phalwan @ Yogesh Singh.
7. Subsequently, Sonu Phalwan @ Yogesh Singh, upon joining the investigation on 08.06.2020, disclosed that he was involved in both the incidents of shooting. He further revealed that he along with his friend, namely, Ajit Singh, that is the applicant herein, had hatched the conspiracy against the complainant. They are both stated to be residents of village Jagatpur. It was also revealed that Prince Tewatia and Hari Kishan were also involved in the said conspiracy.
8. The Call Data Records (CDRs) of the mobile phone of the accused- Sonu Phalwan @ Yogesh Singh and Ajit Singh, were analysed and revealed that on 23.5.2020, both of them were in touch with each other and continued to be so till the date of the second shooting, that is, 01.06.2020. Sonu Phalwan @ Yogesh Singh revealed that Prince Tewatia and Hari Kishan are his friends.

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9. It is stated that Prince Tewatia was released on *interim* bail on 16.05.2020 in relation to FIR No. 190/2019 registered for offence under Sections 186/353/307/34 of the IPC, prior to which he was in judicial custody. Sonu Phalwan @ Yogesh Singh on the same day, at the house of his friend Udit Arora, organized a party to celebrate the release of Prince Tewatia. Similar parties were also organized on 23.05.2020 and 01.06.2020, that is on the dates of the two incidents. It is further stated that all of them in connivance with each other executed a plan to shoot a person for which fire arms were supplied to Vikrant, Rahul, Honey, and Imran by Prince Tewatia, being his associates. They were instructed to shoot the complainant's brother and return the said fire arms to Prince Tewatia.
10. Subsequently, Prince Tewatia was found to be absconding and Non-Bailable Warrants (NBWs) were issued against him, Ajit Singh, Rahul @ Fauzi @ Pankaj, and Vikrant, subsequent to which Section 82 Cr.P.C. proceedings were also initiated.
11. Information regarding Prince Tewatia's arrest was received on 24.10.2020 in relation to FIR No. 268/2020 registered with Police Station, Lodhi Colony, Delhi for offence registered under Section 25 of the Arms Act. Upon obtaining permission from the Court, Prince Tewatia was interrogated, wherein he revealed his role in the present case. On 02.11.2020, his one day Police Custody remand was obtained, whereafter he was arrested to ensure recovery of the weapon of offence (fire arms) but he did not cooperate and recovery could not be made.

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12. Co-accused Harikishan was arrested on 09.07.2020 in FIR No. 172/2020 registered with Police Station Special Cell for offence under Sections 186/353/307/34 of the IPC. After his interrogation in the present case, the Special Cell recovered the fire arm from his possession. The recovered fire arm along with the empty cartridges was sent to the FSL. As per the FSL report, the fire arm and bullets were a match.
13. The applicant herein, Ajit Singh, surrendered on 31.08.2020. Thereafter, he was interrogated and eventually arrested in the present case. He revealed that he had hatched a conspiracy with Sonu Phalwan @ Yogesh Singh, and hired shooters, namely Prince Tewatia and Hari Kishan. This version is corroborated by the CDRs of Ajit Singh's mobile. Three days' Police Custody Remand was sought, but the phone was not recovered. Thereafter, Section 201 of the IPC for destruction of evidence was added against Sh. Ajit Singh for which supplementary chargesheet has also been filed.
14. Vikrant @ Pintu @ Mental was also arrested on 26.04.2023 in relation to the said FIR.

Submissions by the learned counsel for the applicant

15. The learned counsel for the applicant submits that the entire case against the applicant is based on the statement of Sh. Rambir Singh recorded under Section 161 of the Cr.P.C., wherein he expressed a suspicion that he was the real target of the shooting as he has a property dispute with the applicant herein. He submits



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that later it is the case of the prosecution that the involvement of the applicant in the offence can be established from the CDRs showing that certain conversation had allegedly taken place between the applicant and the co-accused Sonu Phalwan @ Yogesh Singh. He submits that the prosecution admits that the contact between the applicant and the alleged shooter is not established; the presence of the applicant at the spot of the incident is not established; there is no other evidence against the applicant except the CDRs and the statement of the complainant expressing his suspicion of the applicant being involved in the case.

16. He submits that as far as Sonu Phalwan @ Yogesh Singh is concerned, he has been granted bail vide order dated 14.12.2020 passed by the learned Additional Sessions Judge-04, Central District, Delhi.
17. He submits that the applicant has been languishing in jail since 31.08.2020.
18. He further submits that as far as the allegation of the applicant having criminal antecedents is concerned, out of the eight cases that have been cited against the applicant, he has been acquitted in one, while the FIR has been quashed in one more. Two cases cited are in relation to the present incident, that is, the FIR in question and FIR no.212/2020. The other FIR(s) are also for minor offences, and for one FIR, that is, FIR no.498/2020, in spite of best efforts, he has not been able to get any details thereof. Even as per the prosecution, it is registered only under

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Sections 279/337 of the IPC.

19. He further submits that the applicant had himself surrendered in the present case and therefore, for the reasons given hereinabove, he should be now released on bail.

Submissions by the learned APP for the State and the learned counsel for the Complainant

20. On the other hand, the learned APP and the learned counsel for the complainant submit that the applicant has criminal antecedents and has been declared to be of Bad Character.
21. They further submit that the present case, is one of conspiracy hatched to eliminate the complainant, for which the first attempt was made on the intervening night of 23-24.05.2020 and thereafter, on 01.6.2020, and under mistaken identity, the shooters, in fact, ended up killing the deceased.
22. They submit that the chain of conspiracy is fully established with the contact between the shooters with Prince Tewatia, who organized the whole incident while he was out on *interim* bail, with Sonu Phalwan @ Yogesh Singh against whom it has been found that they were having parties together along with the shooters, and finally to the applicant who was in direct contact with Sonu Phalwan @ Yogesh Singh around the time of both the incidents, that is, on the intervening night of 23-24.05.2020 and on 01.06.2020.
23. They further submit that the motive is also established against the applicant and therefore, he cannot take any benefit of the bail



granted to Sonu Phalwan @ Yogesh Singh against whom there was no motive alleged. They submit that parity cannot be drawn between the co-accused having been granted bail, as, to apply parity, individual role of the accused/applicant has to be seen.

24. The learned counsel for the complainant-Mr.Rambir Singh, in addition, submits that there is every likelihood that if the applicant is released on bail, he would try to commit the offence again. He submits that they are receiving constant threats for which complaints have been lodged with the police and security has been provided. He submits that, in fact, even the family of the deceased is receiving threats.
25. He submits that the complainant has filed a petition, being CrI. M.C. no.6583/2023, titled ***Rambir Singh v. State of NCT of Delhi***, before this Court, complaining of an improper and incomplete investigation being carried out by the police. He submits that the entire genesis of the incident lies in a property dispute between Rambir Singh and the applicant, details whereof were provided to the police but were not properly investigated. He submits that, in fact, there is another accused named Kuldeep Singh, whose role in the incident has not been investigated.

Analysis & finding

26. I have considered the submissions made by the learned counsels for the parties.
27. It is apparent from the case of the prosecution as pleaded, that the applicant has been made as an accused basis the statement of



Sh.Rambir Singh, who has stated that he has a property dispute with the applicant and he suspects the applicant to be involved in the attack on him. It is also based on the alleged CDR analysis which shows the applicant and the co-accused Sonu Phalwan @ Yogesh Singh to be in contact with each other around the time of both the attacks, that is, on the intervening night of 23-24.05.2020 and on 01.06.2020.

28. The above piece of evidence at least *prima facie* and only for the purposes of the present application, appears to be rather weak.
29. As per the prosecution, the link between the applicant to the main accused, that is, the boys on the motorcycles who allegedly fired on the deceased is through Sonu Phalwan @ Yogesh Singh, and then through Prince Tewatia. Sonu Phalwan @ Yogesh Singh has been granted bail by the learned Additional Sessions Judge vide order dated 14.12.2020. The applicant, however, continues to languish in jail since 31.08.2020. The complainant that is, Rambir Singh, has, in fact, filed a petition seeking further investigation. Therefore, the trial is not likely to end very soon.
30. As far as the submission of the learned APP and the learned counsel for the complainant that the applicant is involved in other cases, the learned counsel for the applicant has explained the same, as has been recorded hereinabove. The same cannot be a ground to deny the bail to the applicant if he is otherwise entitled to the same in the present case.
31. The applicant merely because earlier he was declared as a Bad Character, cannot be denied bail on that ground.



32. On the submission of the learned counsel for Mr.Rambir Singh, of the perceived threats from the applicant, in my view, the same appears to be without any basis as the applicant has been in custody since 31.08.2020. As noted hereinabove, Sonu Phalwan @ Yogesh Singh has been released on bail vide order dated 14.12.2020. It is not stated that the said order has been challenged by either the State or Mr.Rambir Singh, complaining of any threat received. In any case, in case the applicant misuses the indulgence granted, the State or Mr.Rambir Singh can always move an application seeking cancellation of bail, however, only on the basis of an apprehension that the applicant may misuse the indulgence of him being released on bail, cannot be a ground to deny him his constitutional right to life and liberty guaranteed under Article 21 of the Constitution of India.
33. Keeping in view the nature of allegations that have been made by the prosecution against the applicant, and testing the same on the parameters summarised in the judgment of the Supreme Court in ***Deepak Yadav v. State of Uttar Pradesh & Anr.***, (2022) 8 SCC 559, in my view, the applicant has been able to make out a case for being released on bail.
34. In view of the above, it is directed that the applicant be released on bail, in FIR no.227/2020 registered at Police Station: Wazirabad, North, Delhi, under Sections 302/120B/34 of the IPC and Section 27 of the Arms Act, on furnishing a personal bond in the sum of Rs.25,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court, and further subject



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to the following conditions:

- i. The Applicant will not leave the country without the prior permission of the learned Trial Court.
- ii. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- iii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the Ld. Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses, especially the complainant-Shri Rambir Singh and/or any member of the victim's family.

35. The Bail Application is disposed of in the above terms.

36. Needless to state, 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.

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37. A copy of this order be sent to the Jail Superintendent for information and necessary compliance.

38. *Dasti.*

NAVIN CHAWLA, J

FEBRUARY 13, 2024/RN/RP

Click here to check corrigendum, if any

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