



\$~5

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

+ **BAIL APPLN. 2427/2024**

PREM RAJ

.....Applicant

Through: Ms. Santosh Dixit, Adv.

versus

THE STATE (GOVT. OF NCT OF
DELHI)

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with
Insp. Govind Rawat and SI
Sachin, PS Nand Nagri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

27.08.2024

%

CRL.M.A. 20447/2024 (*exemption from filing certified copies of annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

BAIL APPLN. 2427/2024

3. The present application is filed seeking regular bail in FIR No. 663/2018 dated 29.10.2018, registered at Police Station Nand Nagri, for offences under Sections 302/307/34 of the Indian Penal Code, 1860 (**IPC**) and Sections 25/27 of the Arms Act, 1959 (**Arms Act**).
4. The present FIR was registered pursuant to a complaint filed by the complainant alleging that the applicant and his family had enmity with the complainant's family after the complainant's brother married a girl from the family of the applicant.
5. It is alleged that on the date of incident, the applicant and his family members, that is the other co-accused person, attacked

BAIL APPLN. 2427/2024

Page 1 of 4



the complainant's father with sticks and a pipe.

6. It is further alleged that the accused, Sachin and Kartar, shot the father of the complainant on the chest.

7. It is not denied that the victim succumbed to the injuries pursuant to a shot fired from pistol. As per the prosecution, the pistol was fired by the accused Kartar.

8. All the accused persons are chargesheeted with the aid of Section 34 of the IPC, having a common intention to kill the victim.

9. Even as per the prosecution the family of the applicant and the victim's family had enmity for the reason that one of the family members of the victim marrying a girl from the family of the applicant.

10. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

11. However, prolonged incarceration as an undertrial militates against the right to life and personal liberty guaranteed under Article 21 of the Constitution, and is also a factor which has to be kept in mind at the time of deciding the question of grant or refusal of bail.

12. The applicant is in custody since 18.12.2018 and has spent more than three years in incarceration. The applicant is about 70 years of age.



13. The applicant was released on interim bail on an earlier occasion and admittedly has not misused the liberty.

14. On being asked, it is pointed out that about 38 witnesses still remain to be examined. The trial will undisputedly take a long period of time before it finally concludes.

15. The Hon'ble Apex Court in the case of *Union of India v. K.A. Najeeb* : AIR 2021 SC 712 held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

16. Section 437 of the Code of Criminal Procedure, 1973 (CrPC) also recognises special treatment to be given to women and infirm persons. A person of 70 years of age suffering from various ailments definitely falls in the category of infirm persons eligible for special treatment as recognised by the CrPC.

17. 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. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

18. In view of the above, without commenting on the merits of the case, 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. The applicant 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. The applicant shall under no circumstance contact the complainant / other witnesses;
 - c. The applicant shall under no circumstance leave the boundaries of the country without taking permission of the learned Trial Court;
 - d. The applicant shall appear before the learned Trial Court as and when directed;
 - e. The applicant 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. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

19. 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 filing an application seeking cancellation of bail.

20. 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.

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

AMIT MAHAJAN, J

AUGUST 27, 2024

'KD'