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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 22nd August, 2024***+ **BAIL APPLN. 2477/2024**

SHAHZAD @ CHOTA NANHA

.....Petitioner

Through: Mr. S. N. Qureshi, Advocate.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for State.
S.I. Neeraj Chahal, PS Seelampur,
Delhi.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Petition under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C., 1973"*) has been filed on behalf of the petitioner seeking bail in FIR No. 141/2018 registered under Sections 302/307/34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*) and Sections 25/27 of the Arms Act at Police Station Seelampur, Delhi.
2. It is submitted in the present petition that the FIR was registered on the statement of Shri Nazim, wherein it was alleged that the petitioner had some enmity with one Kallu. Four days prior to the incident, the informant had been seen talking to Kallu, to which the petitioner had taken an objection and had warned the informant that he would face the dire consequences if he continued to do so.



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3. On 04.06.2018 at about 10:30 P.M., co-accused-Chammo came to the residence of the informant and asked if he had developed friendly relations with Kallu or not, to which the informant answered in the negative. Co-accused-Chammo threatened the informant to face the dire consequences and went away. Thereafter, the informant went to the house of the petitioner to ascertain the issues *inter se* them. While, the informant was returning to his residence, the petitioner and the co-accused Moinuddin @ Bada Nanha, Danish, Chammo, Akil came to the residence of the informant.

4. It is submitted that the petitioner armed with a pistol in his hand allegedly co-accused-Moinuddin @ Bada Nanha physically assaulted the informant and when the brother of the informant tried to pacify the scuffle, the petitioner fired on the informant, but the bullet hit the abdomen of Mukim. In the meanwhile, Salman also came there and caught hold of co-accused-Moinuddin @ Bada Nanha in order to pacify the scuffle. Co-accused-Danish and Akil caught hold of Salman and co-accused-Chammo instigated the other co-accused persons to assault Salman. Upon such instigation, the petitioner fired upon Salman who fell there immediately and all the accused persons ran from the spot. The brother of the informant threw a stick towards the accused persons which hit co-accused Moinuddin @ Bada Nanha who fell down.

5. Accordingly, the present FIR was registered and upon completion of investigations, the Chargesheet under Sections 302/307/34 of IPC, 1860 and Sections 25/27 of the Arms Act was filed against the accused persons.

6. The petitioner has asserted that all the allegations made herein are absolutely false, fabricated and concocted. Neither was he involved in the incident of firing nor did he commit any overt act in the alleged commission



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of offence. The petitioner had come to the spot after sometime of the incident and was assaulted by the informant and his family members, because of which, he suffered injuries. The falsehood of the case of the prosecution is evident from the fact that, co-accused-Moinuddin @ Bada Nanha was shifted to JPC Hospital by his maternal nephew, namely, Danish and other injured, namely, Salman and Mukim by Imran. This clearly reflects that the informant-Nazim was not present on the spot.

7. It is also submitted that as per DD No. 25A which was sent by Head Constable Najakat Ali, Duty Constable, posted at JPC Hospital, it was mentioned that besides Mukim and Salman, co-accused-Moinuddin @ Bada Nanha had also been admitted in the Hospital. There is also a mention in the PCR form about that admission of these persons in the Hospital.

8. It is further submitted that the petitioner was arrested subsequently on 25.06.2018 and there is no explanation given by the prosecution as to how and when co-accused-Moinuddin @ Bada Nanha was discharged from the Hospital when the Police had already reached JPC Hospital as stated by PW-Imran and also when a Head Constable Najakat Ali was present on duty.

9. It is claimed that the entire prosecution story is sheer concoction and no statement of the petitioner was recorded as to how he had sustained injuries. Moreover, Mukim was conscious and oriented when taken to the Hospital, despite which, his statement had not been recorded by the Investigating Officer.

10. The petitioner has claimed that the complainant along with the other eye-witnesses have, in fact, committed the murder of Hakimuddin, the brother of the petitioner.



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11. It is asserted that the petitioner is not involved in any other case of any nature and in the present case as well, he has been falsely implicated.

12. It is further asserted that the first Bail Application under Section 439 of the Cr.P.C., 1973 dated 05.04.2024 has been dismissed by the learned Additional Sessions Judge *vide* Order dated 05.04.2024.

13. The investigations in the present case already stand completed and the petitioner is no longer required for any custodial interrogation.

14. Moreover, the testimony of nine prosecution witnesses has already been recorded and none of them have supported the case of the prosecution.

15. The petitioner undertakes to abide by any terms which may be imposed upon him while granting bail.

16. In the end, it is stated that the co-accused-Chammo and Danish have already been admitted to regular bail *vide* Orders 06.07.2023 and 15.12.2023 respectively.

17. Therefore, the prayer is made for grant of bail in the present case.

18. **A hardcopy of the Status Report filed on behalf of the State** has been handed over in the Court today, wherein it is stated that during investigations, two empty rounds were recovered from the scene of crime. Moinuddin @ Bada Nanha was arrested on 05.06.2018. While the petitioner was arrested on 25.06.2018 in case FIR No. 171/2018 registered at Police Station Seelampur, Delhi under Section 25 of the Arms Act. The petitioner disclosed that he had used the same pistol for firing on the date of crime.

19. It is submitted that during the investigations, the said pistol was recovered from the petitioner and was sent to FSL for expert opinion. The FSL Report was obtained, wherein it is stated that the empty cartridges found at the spot of the incident which were fired from the pistol recovered



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from Shahzad.

20. It is further submitted that the testimony of the twenty witnesses has been recorded, out of 42 prosecution witnesses relied upon by the State.

21. Therefore, the present bail petition has been vehemently opposed.

22. **Submissions heard.**

23. As per the case of the prosecution, the petitioner was the main accused who along with the co-accused persons had gone to the house of the informant armed with a weapon i.e., the pistol which was used by him to shoot the deceased-Salman which led to his demise.

24. Moreover, the petitioner had been arrested subsequently on 25.06.2018 in the present FIR registered under Section 25 of the Arms Act at Police Station Seelampur, Delhi and also the weapon of offence i.e., the pistol was recovered from his possession.

25. Pertinently, the FSL Report confirms that the pistol so recovered from the possession of the petitioner, was the weapon which was used for firing on the spot as the two empty cartridges so recovered matched with the pistol.

26. The ground of the petitioner that co-accused-Chammo and Danish have already been admitted to regular bail *vide* Orders 06.07.2023 and 15.12.2023 respectively by the learned Trial Court. The said two accused persons may have been admitted to regular bail, but their role is much different from the petitioner who is the main accused.

27. Considering the gravity of the offence and that the testimony of the twenty prosecution witnesses already stands recorded and the trial may get concluded soon, no case is made out for grant of bail.

28. Accordingly, the present petition is dismissed.



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29. The Registry is directed to take the hardcopy of the Status Report filed on behalf of the State on record.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 22, 2024
S.Sharma