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

+ **BAIL APPLN. 3485/2023**

NITIN THAKRAL

..... Applicant

Through: Mr. Pranay Jain, Mr.
Manoj Gupta & Ms.
Ayushi Sharma, Advs.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Pradeep Gahalot, APP
for the State with Mr.
Karan Khatri, Adv.
SI Vishwa, PS- Bharat
Nagar

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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24.04.2024

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in FIR No. 734/2022 dated 11.09.2022, registered at Police Station Bharat Nagar, for the offences under Sections 186/353/332/307/34 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959.

2. It is the prosecution's case that on 11.09.2022, information was received that a stolen Brezza car was parked behind Laxmi Bai College. It was also informed that the thieves intended to transport the stolen Brezza car to Uttar Pradesh and were going to come in a Uttar Pradesh registered Baleno car. It is alleged that a team reached the spot to intercept the culprits.

3. It is alleged that around 6 AM, a grey Baleno car with unclear license plates approached the scene. After some time, the

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applicant exited the Baleno car and sat in the stolen Brezza car. It is alleged that the police team tried to close in on the culprits, due to which, the person in the Baleno car got alerted and tried to run over the team before escaping from the spot.

4. It is alleged that the applicant drew a weapon (*katta*) and took aim at the police team. It is alleged that the applicant was then shot near the jaw and taken for treatment to hospital.

5. It is alleged that a country made pistol along with six live cartridges, the stolen Brezza car and ignition with key were recovered from the possession of the applicant.

6. The learned counsel for the applicant submits that the present case is baseless and the applicant has been falsely implicated merely because of his previous antecedents.

7. He submits that the alleged incident happened in a busy place despite which no public witness has been added in the present case.

8. He submits that it is suspicious that no member of the police team noted the number of the Baleno car.

9. He further submits that the incident happened in a busy area despite which there is no CCTV footage or public witness to corroborate the allegations levelled against the applicant by the prosecution.

10. He submits that as per the FIR and MLC of the applicant, the incident happened around 6 AM. However, as per GD No. 0022A, the team left from the police station at 7:02 AM, which contradicts the prosecution's version.

11. He submits that the prosecution has not been able to trace the alleged associate of the applicant or the Baleno car allegedly used in the commission of the offence.

12. He submits that it is an admitted case of the prosecution

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that the applicant did not fire towards the police team.

13. He submits that the applicant has been in custody since 11.09.2022 and the matter is still at the stage of prosecution evidence.

14. The learned Additional Public Prosecutor for the State opposes the grant of any relief to the applicant and submits that the crime in the present case is grave in nature.

15. He submits that an active role has been attributed to the applicant in the commission of the offence.

16. He submits that the country made pistol drawn by the applicant against the police team and the stolen Brezza car has been recovered from the applicant.

17. He submits that the applicant is a habitual offender and is involved in multiple cases.

18. The learned counsel for the applicant submits that out of the 26 cases listed as pending against the applicant in the Status Report, only one other FIR apart from the present case, being FIR No. 4210/2020, registered at Police Station Rajouri Garden, remains pending against the applicant. He submits that the applicant has filed a duly sworn affidavit in this regard as well.

19. 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. However, at the same time, period of incarceration is also a relevant factor that is to be considered.

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20. It is the case of the prosecution that the applicant along with the unknown culprit had reached the spot of incident to transport the stolen Brezza car. It is alleged that the unknown associate of the applicant was driving the Baleno car and he had tried to run over the police team before escaping. The allegation against the applicant is that he had drawn a country made pistol and pointed it towards the police team. Number of the Baleno car was not noted. There is no evidence at this stage to corroborate that the unknown accused person tried to run over the police team.

21. It is not disputed that the applicant himself did not try to run over the police team. In the present circumstances, it cannot be said with certainty that the applicant was aware that his alleged associate would try to run over the police team in the manner that has been alleged.

22. Even though it is alleged that the applicant took out a pistol and pointed it towards the police team, however, it is an admitted case of the prosecution that no shot was fired from the same.

23. It is relevant to note that there are no public witnesses in the present case. No CDR of the time of the incident or CCTV footage of the same has been procured by the prosecution to corroborate the allegations either. In such circumstances, the very presence of the applicant at the spot of the crime is disputable. The allegations and defences in this regard are a matter of trial.

24. The chargesheet has already been filed in the present case. The matter is at the stage of prosecution evidence. 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.

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25. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time. In the opinion of this Court, no purpose would be served by keeping the applicant in further custody.

26. Insofar as the prior involvements of the applicant are concerned, it is settled law that criminal antecedents of an accused cannot be the sole basis for refusal of bail [***Prabhakar Tewari v. State of U.P. : (2020) 11 SCC 648***].

27. Considering the aforesaid discussion, this Court is of the opinion that the applicant has established a *prima facie* case for grant of bail.

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

29. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- 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 leave the boundaries of Delhi without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. 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;

- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phones switched on at all times.

30. 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.

31. 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.

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

AMIT MAHAJAN, J

APRIL 24, 2024
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