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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 3350/2022 & CRL.M.A. 9361/2024Add. Document
ASHFAQ Petitioner

Through: Ms. Arundhati Katju, Sr. Adv. with
Mr. Ali Chaudhary, Mr. Abuzar,
Ms. Shristi Borthakur & Ms. Ritika
Meena, Advs.

versus

STATE OF NCT OF DELHI Respondent

Through: Mr. Hemant Mehla, APP for the
State with SI Jaivind Kumar, P.S.
Jamia Nagar.
Mr. Raees Khan, Adv. for
complainant/injured.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

ORDER
09.04.2024

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1. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR No. 240/2022 under Sections 307/427/506/147/148/149/34 of the IPC and Sections 25/27/54/59 of the Arms Act, registered at P.S Jamia Nagar.
2. The case of the prosecution as per the status report dated 03.12.2022 authored by Inspector Mahesh Kasana, SHO/Jamia Nagar is as under:-

“1. It is submitted that on 01.06.2022 Pcr calls vide DD No.92A, 93A, 96A, 100A regarding firing of gunshot. Thereafter SI Shivraj along with HC Mahender No.2989/Se reached the spot H.No.510, Gali No.40 Zakir Nagar and found that one Jabir @Javed sustained gunshot injury and the injured was shifted to Holy Family Hospital. Thereafter the Crime Team was called at the spot and after inspection the Crime Team found one empty bullet shell which was taken into police possession. Thereafter the IO reached Holy Family Hospital for recording statement of injured but due to



serious condition of injured, he was referred to AHMS Trauma Centre. Thereafter MLC of injured Jabir @ Javed was received wherein Doctor opined that, "A/H/O assault by 4 known people with some other people not known to patient on 01.06.2022 at around 9.30 PM in Zakir Nagar apparently one person had a knife and one had a gun who shot and sustaining injuries abrasions by knife and gunshot wound on chest and side". Thereafter the IO reached at AIIMS Trauma Centre, where Doctor opined 'Pt. Jabir @ Javed was unfit for statement. In the meantime got information of MLC of other party in the quarrel, vide MLC No.500317260/22 of Pt. Afroz @ Babu and MLC No.500317271121 of Pt. Nargis, who both were under treatment and received MLC of both injured persons. After that Sabir brother of injured Jabir @ Javed met and his statement was recorded wherein he stated that he is residing at hno 39 6th Floor Gali No 39 Zakir Nagar with his family and his profession is white washing of houses and his elder brother Jabir @ Javed does work of building construction who has taken one room on rent in H.No. 510, Gali No. 39 Zakir Nagar from Saleem since one and half year for residing his labour and labours of his brother lives, in the said room and they are being frequently harassed and tortured by Afroz @ Babu and his family members. On this issue altercation took place at many times between Javed @ Jabir and Afroz @ Babu along with his family members, they used to sit illegally in the said room and harasses the labours. Thereafter on 01/06/22 at about 8:30 PM while he was at his home then his son Ayan came there and told him that some people are beating Bade papa (Jabir @ Javed) in Gali of the said labour's room, he immediately reached at the spot and saw that Afroz @ Babu and Aftab were beating his elder brother Jabir @ Javed while Sarfaraj and Firoz caught hold his back and their other associates were also present in giving beating, they all were saying that they will kill him today and his brother Jabir @ Javed was Shouting for help meanwhile crowd gathered and some how his brother escaped and ran away towards his house and both hide in Jabir's house situated at Hno 510, Gali No. 39, second Floor Zakir Nagar and closed gate from inside. After some time the above said accused persons came at his brother's house and started shouting and abusing by speaking name of his brother and threatened to



kill him today that they will not leave him alive and thereafter damaged his brother's Motor Cycle TVS Apache red colour bearing No. DLSAU4318, thereafter when his brother Jabir@ Javed accessed balcony of flat and saw that they all were standing in the Gali and that the Babu @ Afroz was carrying country made Pistol and Sarfaraz, Firoz, Aftab were armed with dandas and after seeing his brother in balcony, Babu @ Afroz with intention to kill his brother targeted him and fired Gunshot and one bullet hit his brother's chest at below of his right shoulder, after which they all fled away from the spot.

2) Thereafter On the statement of injured's brother Sabir and perusal of MLC a case vide Fir no 240/22 U/s 307/506/427/34 IPC & 25/27 Arms Act was registered and investigation taken up.

3) Thereafter During investigation brother of injured Jabir @ Javed recorded his Supplementary Statement wherein he stated that the lady found under treatment in AIIMS hospital is Nargis, and she was also involved in beating and altercation with his brother. And other two ladies namely Suraiyya and Shahjahan @ Chuhia were also with them. All these three ladies were used to harass labours of his brother and starts arguments at all times whenever his brother raised objection these ladies Shahjahan @ Chuhiya, Nargis and Suraiya in collusion with Afroz, Aftab, Sarfaraj and Firoj committed beating and quarrel with his brother. At the instigation of Shahjahan @ Chuhiya, Nargis and Suraiya, even after ending of quarrel, Afroz alongwith his family members came upto our home and gave threats to kill Javed. Shahjahan@ Chuhiya ,Nargis, Suraiya, Aftab, Sarfaraz and Feroz all together break Motor cycle of his brother parked outside house. Thereafter on the provocation by Shahjahan @ Chuhia, Nargis and Suraiya to kill Javed , the Afroz @ Babu took out his pistol from his pant and by targeting his brother Javed @ Jabir fired gunshot at him, and bullet hit him on his chest and then he fell down in balcony and they all left by giving threats to face dire consequences.

4) Thereafter the accused person Suraiya, Nargis along with his Mother Chuhia and brother Afroz @ Babu were arrested in the present case.

5) Thereafter the present Petitioner Ashfaq was arrested by AA TS Staff in Case fir No 306/22 dated 02/06/22 U/s 25/54/59 Arms Act



Ps Sarita Vihar and also the weapon used in the present case was seized from the possession of accused Ashfaq. Thereafter during the interrogation by the AATS Staff the accused Ashfaq disclosed that he was also involved in altercation with Javed @ Jabir along with his family members and he had provided the said Pistol to Afroz @ Babu from which he fired Gunshot on Javed @ Jabir with intention to kill him and the same pistol was recovered from the possession of Ashfaq in case fir no 306/22.

6) Thereafter on 06.06.2022 the Injured Jabir @ Javed was declared fit for statement and his statement U/s 161 CrPC was recorded wherein he alleged that Ashfaq together with his family has come to the house of Complainant. Thereafter damaged his vehicle and Afroz @ Babu Fired on him with intention to kill him and one bullet hit him in his chest below his right shoulder. Thereafter the present applicant/Accused Ashfaq had also fired gunshot towards his Balcony with intention to kill him.

3. Learned counsel for the applicant submits that the name of the latter was not taken by the first informant in the statement resulting in the registration of the FIR. It is pointed out that the informant is the brother of the injured, who is stated to be an eye-witness. It is submitted that during investigation the informant recorded his supplementary statement and in the said statement the informant did not mention the name of the present applicant alongwith the names of the other persons who had come to the house of the complainant. On 03.06.2022, the present applicant was arrested by AATS staff in case FIR No. 306/2022 under Sections 25/54/59 Arms Act, registered at PS Sarita Vihar. It is the case of the prosecution that during interrogation, the present applicant disclosed his involvement in the present FIR. Subsequently, on 06.06.2022, injured, who was declared fit for statement, mentioned the name of the present applicant, as a person, who had come alongwith the others on the date of the incident. It is further



alleged that the present applicant had also fired gunshots towards his balcony with the intention to kill him. It is pointed out that the informant and injured in the present case have been examined. The applicant has been in custody since 07.06.2022 in the present FIR.

4. *Per contra*, learned APP for the State, on instructions from the Investigating Officer and assisted by the learned counsel for the complainant, submits the injured and the informant during their examination before the learned Trial Court have categorically implicated the present applicant in the incident. It is submitted that the applicant has been assigned the role of shooting at the injured, however, the bullet did not hit him. It is further submitted that the 'shell' found on the spot has been matched with the weapon recovered from the present applicant in the other FIR.

5. Heard learned counsel for the parties and perused the record.

6. As per the prosecution case, the name of the present applicant was taken for the first time by the injured in his statement on 06.06.2022 after being declared fit to give his statement. It is a matter of record that the first informant, i.e., brother of the injured, who was stated to be eye eyewitness, did not take applicant's name at the very first instance and his name was not taken by him in the supplementary statement as well. The informant and the injured have been examined and cross-examined before the learned Trial Court. The applicant has been in custody since 07.06.2022.

7. In totality of the facts and circumstances, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with two sureties of like amount one of whom should be a family member, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:



- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall report at the office of Superintendent of Police, Jamia Nagar once in a week, i.e., on every Friday at 4:00 PM and the concerned officer is directed to release him by 5:00 PM after recording his presence and completion of all the necessary formalities.
- iv. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- v. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- vi. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
8. The application is allowed and disposed of accordingly.
9. Pending application(s), if any, also stand disposed of.
10. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
11. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
12. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

APRIL 9, 2024/nk

Click here to check corrigendum, if any