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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 2541/2024

AMIT DUBEY

.....Petitioner

Through: Ms. Sunita Sevda, Mr. Mohit Kumar
and Mr. Sandeep Singh, Advs.

versus

THE STATE OF GNCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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09.08.2024

1. By way of present bail application, the applicant seeks regular bail in FIR No.129/2021 registered under Sections 302/34 IPC and Sections 25/27 Arms Act at P.S. Adarsh Nagar, North West, Delhi.
2. At the outset, it is noted that the applicant's Bail Application 1369/2024 was considered by this Court on 22.05.2024 and after some arguments, learned counsel for the applicant sought withdrawal of the same. The application was permitted to be withdrawn. The present application has been filed within two months of the said order on the premise that since then, statement of one Samar has been recorded in the Trial Court, as well as the fact that the FSL Report which does not support the prosecution case has not been brought to the knowledge of this Court.
3. Learned counsel for the applicant has re-canvassed the submissions including doubting the presence of the eye witness, namely Neetu, at the spot. The presence is doubted by contending that Neetu, who had stated that



she was present and lifted the body, had no blood stains on her own clothes. The next reliance is placed on the FSL Report, wherein it has been opined that the firing marks did not match on the relevant parameters. It is further stated that the applicant is in custody since 20.03.2021 and while placing reliance on the decision in Praveen Rathore v. State of Rajasthan reported as **2023 SCC OnLine SC 1286**, it is stated that considering the length of the custody, the applicant's bail should be considered favourably.

4. The application is vehemently opposed by the learned APP, who submits that this Court, while considering the first bail application, had appreciated the testimony of the eye witness, Neetu, and was not inclined to entertain the said application. He further submits that the perusal of the testimony of Samar would rather strengthen the prosecution case inasmuch as Samar has testified to the presence of Neetu at the spot, on the date of the incident.

It is further submitted that the pistol seized in the present case is an improvised pistol and non-matching with the firing marks and is therefore, inconsequential. At this stage, learned APP places reliance on the decision in Abdul Sayeed v. State of M.P., reported as **(2010) 10 SCC 259**, to submit that where the case is based on an eye witness account, the reports in the form of FSL would take a backseat.

5. I have heard the learned counsel for the parties.

6. The present application is the second bail application within a span of two months. The only change in the circumstances since then is the recording of the testimony of a witness Samar and placing of FSL Report on record.

7. The learned APP further points out that in the present case, three



improvised pistols have been seized and as per the FSL Report, firing marks match only one of the seized pistols. It is also pointed out that in the history of assault noted in the MLC, the presence of Samar is reflected. Be that as it may, the presence of Neetu is spoken of by the independent witness, Samar.

8. Considering the aforesaid, I find no ground for the grant of bail. Accordingly, the bail application is dismissed.

9. Needless to state, any observation made hereinabove is only for the purpose of disposal of the present bail application and will not have any influence or bearing on the merits of the trial.

MANOJ KUMAR OHRI, J

AUGUST 9, 2024

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