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

+ **BAIL APPLN. 2553/2024**

DEEPANSHU SWAMI

.....Petitioner

Through: Ms. Sakshi Sachdeva with Mr. Gajraj Singh, Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
Ms. Ayushi Gupta, Advocate for the complainant with complainant in court.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

18.11.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No.775/2023 dated 05.09.2023 registered under sections 307/506/34 of the Indian Penal Code, 1860 ('IPC') and sections 25/27 of the Arms Act, 1959 ('Arms Act') at P.S.: Narela Industrial Area, Delhi.

2. Notice on this petition was issued on 23.07.2024.
3. Status Report dated 19.08.2024 has been filed.
4. Nominal Roll dated 26.10.2024 has been received from the Jail Superintendent.



5. Ms. Sakshi Sachdeva, learned counsel appearing for the petitioner submits, that the allegation against the petitioner is that he was the person who caused a gunshot injury to the victim; on which allegation the petitioner was arrested on 12.09.2023.
6. Ms. Sachdeva however points-out that the petitioner was arrested in the present case while he was already in custody in another case bearing FIR No. 777/2023 registered under sections 307/506/387/34 IPC and sections 25/54/59 of the Arms Act at P.S.: Narela Industrial Area, Delhi; in which FIR he has now been granted regular bail *vide* order dated 13.10.2023 passed by the learned ASJ, Rohini Courts, Delhi.
7. Learned counsel clarifies that the noting in the nominal roll to the effect that the petitioner is not on bail in case FIR No. 777/2023, is perhaps by reason of the fact that the petitioner has not furnished bail bonds in the said case as of date, since he is in custody in the present matter.
8. Ms. Sachdeva argues that PW-3 Sahil, who is the purported eye-witness and complainant in the case, has turned hostile in the course of his deposition recorded before the learned Trial Court on 04.07.2024; and PW-5, the brother of the injured victim, has also turned hostile in the course of his testimony.
9. It is stated that of the 14 prosecution witnesses cited in the chargesheet dated 07.11.2023, all 05 public witnesses have been examined before the learned trial court and the remaining witnesses are only formal/official witnesses. It is pointed-out however, that in the meantime the petitioner has already spent about 14 months in judicial custody as an undertrial.



10. Most importantly, attention is drawn to the fact that though the discharge summary of the injured person - Sahil - shows that there was an entry wound and an exit wound arising from the gunshot injury, the MLC opines that the injury is only 'simple'.
11. In the circumstances, counsel argues that the petitioner be enlarged on regular bail.
12. Ms. Shubhi Gupta, learned APP appearing for the State submits, that it is a matter of record that PW-3 and PW-5, who are the prime witnesses in the matter, have turned hostile. Learned APP also states that it is a peculiarity in the matter, that despite the Discharge Summary dated 07.09.2023 noting that there was an exit wound and entry wound correlating to the gunshot injury, the MLC records that the injury sustained is 'simple'.
13. Pursuant to intimation issued *vide* order dated 23.07.2024, the victim Sahil is present in court. The court has heard him. However, he is unable to explain the discrepancy in the statement that he gave to the Investigating Officer under section 161 Cr.P.C. and his deposition in court. Beyond that, he does not appear to have any cogent submission to make.
14. In the circumstances of the case, what weighs with the court at this stage is that two prime witnesses in the matter, *viz.* PW-3 and PW-5, have both turned hostile; that despite the allegation being that the victim had suffered a gunshot injury leading to an entry wound and an exit wound, the MLC opines that the nature of injury is only 'simple'; and that the petitioner has spent about 14 months in judicial custody as an undertrial.



15. In the circumstances of the case, the court is persuaded to admit the petitioner – ***Deepanshu s/o Devender*** – to *regular bail* subject to the following conditions :
- 15.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 15.2. The petitioner shall furnish to the Investigating Officer/S.H.O, P.S.: Narela Industrial Area, Delhi a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 15.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 15.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
- 15.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
16. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.



17. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
18. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
19. The petition is disposed-of in the above terms.
20. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 18, 2024

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