



2024:DHC:4849



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01.07.2024

+ **BAIL APPLN. 3576/2023**

DEEPAK MANN@ MANN

..... Applicant

versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Ramesh Gupta, Sr. Advocate
alongwith Mr. Sahil Garg, Mr.
Shailendra Singh, Mr. Ishaan Jain &
Mr. Harsh Chaudhary, Advocates.

For the Respondent : Mr. Ajay Vikram Singh, APP for the
State alongwith Ms. Anuradha Dutta,
Ms. Honey Rathi & Ms. Aditi Singh,
Advocates & Inspector Amit Kumar
(P.S. Baba Haridas Nagar).

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC'), seeking grant of regular bail in in FIR No. 21/2017, dated 29.01.2017 for offences under Sections 302/34 of Indian Penal Code, 1860 ('IPC') and Section 27 of the Arms Act, 1959, registered at police station Baba Haridas Nagar.

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2. The chargesheet in the present case has already been filed and the matter is pending at the stage of recording of evidence.
3. The FIR was registered on a complaint given by Mukesh on 29.01.2017.
4. It is alleged that he along with deceased/Shri Kishan Pradhan were present at the gate of the deceased's house at village Mitrau and were purchasing vegetables when a Scorpio car came from one side and stopped in front of the gate of the house.
5. It is alleged that in the said car one Ankush @ Bhola was sitting in the front seat along with the driver and two other persons on the rear seat, whom the complainant does not recognize. The accused Ankush @ Bhola and one person who was sitting on the rear left side took out revolvers and started firing at deceased Kishan Pradhan. The accused persons after the firing ran away from the spot. Kishan Pradhan got injured due to the firing and was taken to RTRM hospital by the complainant with the help of one Dalbir Singh, where he was declared dead.
6. It is alleged that during investigation the police received information with respect to the arrest of the applicant with other co-accused persons, by the Special Task Force, in another FIR bearing FIR No. 20/2017.
7. It is alleged that the State, thereafter, on 23.03.2017 interrogated the applicant in jail and arrested him in the present FIR.

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8. It is alleged that the weapons used by the accused persons in the present FIR were already recovered by the Special Cell in FIR No. 20/2017.

9. The learned senior counsel for the applicant submitted that the applicant has been falsely implicated in the present case.

10. He submitted that the applicant was in custody in another FIR and has been fastened the liability of the present case solely on the basis of the disclosure statement made by the accused persons while in custody.

11. He submitted that the prosecution have claimed three eye-witnesses of the incident being the vegetable vendor, the complainant, and the daughter-in-law of the deceased.

12. He submitted that the vegetable vendor has not identified that the applicant.

13. He further submitted that even as per the statement of the star witness of the prosecution, that is, the servant who was accompanying the deceased at the time of incident, the applicant had not fired at the deceased.

14. He further submitted that the daughter-in-law of the deceased claimed to be standing on roof of the house and had seen the assailants and the applicant has been named as one of the assailant.

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15. It is vehemently contended that the daughter-in-law is a planted witness since no person standing at a distance on the roof of the house could have identified the assailants.

16. The person standing on the roof could have only seen the head of the persons on the road. Lastly, it was contended that the applicant has been in custody since last almost seven years and the trial is still likely to take considerable amount of time.

17. The learned Additional Public Prosecutor ('APP') for the State had vehemently opposed the grant of present bail application.

18. He submitted that the two eye-witnesses being servant and the daughter-in-law have categorically identified the applicant being one of the assailants who murdered the deceased.

19. He submitted that the Court while hearing the application for bail ought not to conduct a mini trial, nor should appreciate the evidence in depth and the grounds and arguments raised by the applicant in the present bail application are a matter of trial.

ANALYSIS:

20. It is not disputed that the applicant was arrested while he was in custody in another FIR.

21. It is alleged that the applicant and other co-accused persons while in custody had confessed to commission of crime in the present FIR.

22. The case of the prosecution is based on the three alleged eye-witnesses being the vegetable vendor from whom the deceased was



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purchasing vegetables at the time of incident, the servant on whose complaint the FIR was registered and was accompanying the deceased at the time of incident, and third, the daughter-in-law, who was allegedly standing on the roof of the house.

23. It is not denied that the statement of the vegetable vendor has already been recorded and he has not identified the applicant as an assailant. The other eye-witness being complainant had stated that the applicant was sitting in the car while two assailants came out and fired at the victim and the applicant was not the one who had fired. The daughter-in-law has also been examined and stated to have seen the incident while standing on the roof. The probative value of the testimony of the daughter-in-law would be seen at the time of final arguments.

24. It is contended that the daughter-in-law was admittedly standing on the terrace/roof of the house and could not have seen the faces of the assailants on the road since the same would not be visible from such height.

25. It is also contended that if the statement of the daughter-in-law that the applicant was one of the assailants who came out of the car and fired at the deceased is accepted then the same would contradict the statement of the servant who had said that the applicant was sitting inside the car. The contradiction, if any, in that regard would be seen at the time of final arguments and ought not to be commented upon at this stage. However, the same cannot be ignored while considering the application for bail when the accused is in custody since 23.03.2017.

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26. It is not denied that the jail conduct of the applicant is satisfactory and he had not misused the liberty while he was on interim bail. It was mentioned during the course of arguments that the fourteen witnesses are yet to be examined and the trial is thus likely to take considerable period of time before conclusion.

27. 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 offence; the severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing from justice if released on bail; reasonable apprehension of the witnesses being threatened; etc.. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

28. The court, while granting bail, is precluded from delving into the minutiae of evidence to assess its sufficiency in proving the guilt of the accused beyond reasonable doubt. Such an inquiry into the likelihood of the prosecution culminating in a conviction or acquittal is irrelevant at this stage. While deciding a bail application, it is improper for the court to scrutinize or opine on the evidence; engaging in such a practice would transgress the confines of its jurisdiction. The likelihood of guilt or innocence of the accused is not germane when adjudicating the application for bail rather, the pertinent question pertains to whether a *prima facie* case is made out for grant of bail.

29. It is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of



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events the accused is entitled for grant of bail. [Ref: **Ram Govind Upadhyay v. Sudarshan Singh: (2002) 3 SCC 598**].

30. The investigation in the present case already stands concluded with the filing of chargesheet followed by framing of charges and the material witnesses have already been examined by the learned Trial Court. 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.

31. The applicant has been in incarceration since 23.03.2017 and was released on interim bail on multiple occasions on 27.01.2021, 09.05.2021 and 05.2022 and had duly surrendered before the concerned jail authorities within the stipulated time period.

32. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time as 14 witnesses are yet to be examined. In the opinion of this Court, no purpose would be served by keeping the applicant in further custody.

33. The Hon'ble Apex Court in the case of **Union of India v. K.A. Najeeb: AIR 2021 SC 712** held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

34. A long period of incarceration, thus, is an important factor which has to be kept in mind at the time of deciding the question of grant or refusal of bail. Appropriate conditions ought to be put to allay

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the apprehension of tampering with the evidence and hampering the witness.

35. Considering the aforesaid discussion, in the interest of upholding the principles enshrined under Article 21 of the Constitution of India, this Court is of the opinion that the applicant has established a *prima facie* case for the grant of bail.

36. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- 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 country 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



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mobile phones switched on at all times.

37. 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.

38. It is clarified that the observations made in the present order are only for the purpose of deciding the present bail application and shall not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

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

AMIT MAHAJAN, J

JULY 01, 2024

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