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

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Reserved on: 14.05.2024
Pronounced on: 30.05.2024

+ **BAIL APPLN. 3804/2023, CRL.M.A. 30955/2023 & CRL.M.A. 5350/2024**

RAGHAV @ RAGHI

..... Petitioner

Through: Mr. Ramesh Kr. Mishra and
 Mr. Shivam Tiwary, Advs.

versus

STATE OF DELHI & ANR.

..... Respondents

Through: Mr. Manoj Pant, APP for the
 State along with Mr. Haider
 Ali, Mr. Raas Masood Khan
 and Mr. Karmesh Vikrant
 Singh Nagar, Advocates along
 with Inspector Bijay Kumar,
 P.S. Bawana and Inspector
 Anupam Bhushan, Supreme
 Court Security.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present bail application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the petitioner seeking regular bail in case arising out of FIR bearing No. 100/2020, registered at Police Station Bawana, for offences



punishable under Sections 302/34 of the Indian Penal Code, 1860 ('IPC') and Sections 25/54/59 of the Arms Act, 1959.

2. Brief facts of the case are that on receiving an information *vide* DD No. 6A, on 21.02.2020, at about 06:26 AM, Police had reached the spot. On enquiry and reaching the hospital, where the injured person namely Sh. Sarvind had been taken to, they were informed that he had been taken to another hospital. The investigation revealed that during the medical treatment of the victim, a bullet was found lodged in his head. Statement of wife of the injured was recorded, and a case under Section 307 of IPC and 25/27 of the Arms Act was registered at P.S. Bawana. After the victim had succumbed to the injuries, Section 307 was replaced by Section 302 of IPC. The wife of the victim had informed that she worked with her husband in a grocery shop. On 20.02.2020, at about 10 PM, when she was about to close her shop, her husband was standing outside with one neighbour Bijender. Accused persons namely Rakesh @ Balle and Raghav were also standing at some distance. Suddenly, her husband had fallen down and had started bleeding from the head. When he was taken to LNJP Hospital for medical treatment, a bullet was found lodged in his head. During investigation, statement of son of the victim was also recorded, and CCTV footage was also seized. The investigation revealed that an empty cartridge was found lying near the stairs in front of the shop of victim. The bullet recovered from the body of the victim and blood for toxicology, and gun-shot residue were also seized. The statements of witnesses Sushil, Bijender and Suraj were also recorded, who were present at the spot. CCTV footage was also



recovered during the course of investigation. Thereafter, the accused persons were arrested and a country made pistol with two live cartridges inside the magazine was recovered from the possession of applicant Raghav, and three live cartridges were recovered from the house of co-accused Rakesh @ Balle. The post-mortem report also revealed that the victim had died due to the gun-shot injury. Thereafter, charge-sheet was filed and charges were framed by the learned Trial Court.

3. Learned counsel appearing on behalf of the present accused/applicant submits that the applicant has no past criminal antecedents, and he is in judicial custody for last four years. It is further submitted that the applicant is not the main accused as he has not fired at the victim. It is also stated that the applicant had been granted interim bail on 30.10.2023 which was extended *vide* order dated 03.11.2023 till 10.11.2023, and he had not misused the liberty of interim bail. Learned counsel for the applicant also submits that the material witnesses have already been examined and the other witnesses who are yet to be examined are not appearing before the learned Trial Court despite summons to them for the last six months. It is also argued that as per the site plan, there was approximately 30 meters distance between the place from when the victim was allegedly shot at and since the alleged weapon of offence was a *desi katta*, it was not possible to have fired or hit the victim. It is also argued that even if the bullet was fired by co-accused Rakesh, it may have hit the victim accidentally but was not intended to kill him. Learned counsel also states that if the applicant would have intended to kill the victim,



he would not have taken him to home or would have not tendered medical attention to him. Therefore, it is prayed that the present bail application be allowed.

4. Learned APP appearing on behalf of the State has argued that the allegations in the present case are serious in nature and that the material witnesses have supported the prosecution case. It is further stated that some material and eye witnesses are yet to be examined before the learned Trial Court. Therefore, it is prayed that the present bail application be rejected.

5. This Court has heard arguments addressed on behalf of both the parties and has perused the material placed on record.

6. The case of the prosecution, in a nutshell, is that on 20.02.2020, co-accused Rakesh @ Balle and applicant Raghav had fired towards the victim Sarvind, and he had fallen down due to the gun-shot injury received on his head and had later died. As per the statements of the material witnesses recorded before the learned Trial Court, the abovesaid two accused persons had visited the shop of victim about 15 days prior to the incident in question and had threatened and slapped the victim since the victim and his wife and refused to give them money for drinking, etc.

7. Further, this Court notes that the CCTV footage recovered in the present case reveals that applicant Raghav and co-accused Rakesh @ Balle were standing together at some distance from the shop of the victim on the day of incident, and co-accused Rakesh @ Balle had fired towards the victim, who had fallen down after the bullet had hit his head. Later, the victim had succumbed to the gun-shot injury



received by him. The eye-witnesses who have been examined before the learned Trial Court in this case i.e. the wife of the victim Smt. Geeta, who was present at the spot, and Sh. Rohit, who is the son of the victim, have supported the prosecution's case and have deposed as to how the present applicant and co-accused Rakesh @ Balle had fired at the victim, and later had come to their house on the pretext of helping the victim but had rather stopped them from taking the victim to hospital or calling for medical help.

8. The witnesses have correctly identified the present applicant and co-accused Rakesh @ Balle to be the same persons who had fired at the victim. PW-3 i.e. Rohit, had also in the Trial Court, testified that the family members of co-accused Rakesh @ Balle had visited their house and were forcing them to withdraw the present case, and that they had also been threatening them with severe consequences in case they will not withdraw the case.

9. The contention of learned counsel for the applicant that the bullet must have accidentally hit the victim cannot be appreciated at this stage, since the eye-witnesses have clearly deposed against the applicant herein, and have identified to be the same person who was present at the spot alongwith co-accused Rakesh @ Balle, who had fired at the victim. The post-mortem report corroborates the claim of the material witness and the prosecution that a bullet had hit the head of the victim, due to which he had fallen at the spot and had later passed away.

10. Considering that the accused persons had been threatening the witnesses, and some material witnesses are yet to be examined, and



also considering the seriousness and gravity of the offence, this Court is not inclined to grant bail to the applicant at this stage.

11. Accordingly, the present bail application stands dismissed. Pending applications also stand disposed of.

12. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 30, 2024/A/at