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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4029/2023**
SALMAN @ SALMAN MALIK

..... Petitioner

Through: Ms.Tara Narula,
Mr.Harshvardhan Jain &
Ms.Shivangi Sharma, Advs.

versus

STATE (GOVT. OF NCT) OF DELHI

..... Respondent

Through: Mr.Aman Usman, APP with
Inspector Pramod Kumar & SI
Vishwendra, PS Mayur Vihar.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **04.01.2024**

BAIL APPLN. 4029/2023

1. This application has been filed by the applicant seeking Regular Bail in FIR No.624/2020, registered at Police Station Mayur Vihar, Phase-1, under Sections 147/148/149/302/307/120-B/34 of the Indian Penal Code, 1860 (in short, 'IPC') as also Sections 25 and 27 of the Arms Act, 1959.

2. It is the case of the prosecution that on 26.12.2020, information was received through a PCR call of a fight taking place at the Central Park, 27 Block, Trilokpuri, Delhi. A police team visited the spot of the accident, where they found a number of people standing there. On seeing the police, these people started to run. It is further contended that amongst the persons who were standing at the spot and started



running on seeing the police, were one Sajid @ Manna, Javed, Faizal, and Asif and certain other persons who could be identified by the police. It was further stated that an unknown person, who was carrying a country-made pistol, was apprehended by Constable Pradeep. The said person threw away the said pistol and was able to escape from the custody of Constable Pradeep. In the meantime, the applicant, who was also running from the police, picked up the pistol and started to run. He was apprehended by Constable Pawan and Constable Sanjay. Based on the above, he has been charge-sheeted for the above offence.

3. The learned counsel for the applicant submits that the allegation against the applicant stems from an attack on the house of one Sh.Sayeed. In his statement under Section 161 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), Sh.Sayeed has clearly stated that he cannot identify the applicant, and if at all, the applicant may have been somewhere behind in the crowd that had attacked his house. She submits that, therefore, the only evidence against the applicant is that of the two Constables, that is, Constable Pawan and Constable Sanjay, who state that the applicant had picked up a country-made pistol thrown by one of the accused and was thereafter apprehended by them. She submits that, therefore, no offence, as charged, is made out against the applicant.

4. She further submits that the applicant was earlier granted an interim bail for a period of about five months due to the medical condition of his wife. The applicant did not misuse the indulgence so granted and there is no complaint against the applicant regarding the same. He surrendered immediately on the expiry of the interim bail



period. She submits that the wife of the applicant continues to suffer from the medical ailment, which has been duly verified by the prosecution. She submits that the applicant also has a five-year old child who needs care and protection, which, due to the medical condition, applicant's wife is not in a position to give to the child.

5. She further submits that in the last three years, the prosecution has been able to examine only five witnesses, out of which, only one was examined in the last year. She submits that there are a total of around 80 witnesses that were cited by the prosecution to be examined in the case. She submits that, therefore, the trial of the case is likely to take long, as there are a number of accused persons in the case.

6. On the other hand, the learned APP submits that in the present case, the applicant was apprehended along with a weapon. The weapon has been identified, through the ballistic report, as one which caused the death of one person and caused injury to another in the incident. He further submits that the crime committed is heinous in nature and the applicant does not deserve any indulgence of this Court. He submits that the accused has also been charged with the aid of Section 149 IPC and, therefore, no specific role needs to be ascribed to him for the incident.

7. I have considered the submissions made by the learned counsels for the parties.

8. From the statement of Constable Pawan, recorded under Section 161 of the Cr.P.C., it is evident that the applicant was otherwise not identified in the group of persons who were standing at the spot when the police arrived there. The victims also do not identify him as the



preparatory of the crime. The only allegation against the applicant is that when the crowd started to run on seeing the police, the applicant also ran and picked up a gun which was thrown by another accused. It is not shown that the applicant himself was carrying a gun or any other weapon at the time of the accident.

9. As is contended by the learned counsel for the applicant, the applicant has earlier availed of interim bail for a period of five months due to the medical ailment of his wife. It has been informed that the wife continues to suffer from the same medical ailment and the concerned hospital has also advised that she should be under constant care and protection of her family member. The applicant also has a child aged around five years. The above position has been verified by the police.

10. It is also evident that the trial is likely to take long.

11. Keeping in view the above facts and circumstances, the applicant is directed to be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount, subject to the satisfaction of the Ld. Trial Court, and further subject to the following conditions:

- i. The Applicant will not leave the country without the prior permission of the Ld. Trial Court.
- ii. The Applicant shall provide his permanent address to the Ld. Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and also to the IO regarding any change in his residential address.
- iii. The Applicant shall appear before the Ld. Trial Court as and



when the matter is taken up for hearing.

- iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the Ld. Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses.

12. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the matter.

13. The Bail Application is disposed of in the above terms.

14. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

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15. In view of the order passed hereinabove, this application is also disposed of as having been rendered infructuous.

NAVIN CHAWLA, J

JANUARY 4, 2024/rv/AS

Click here to check corrigendum, if any