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

+ **BAIL APPLN. 4031/2023**

NAWAJISH

..... Petitioner

Through: Mr Kush Sharma, Mr Abdul Vahid,
Ms Komal, Nischay Nigam and Ms
Neha Kumari, Advocates.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr Hemant Mehla, APP for the State
with SI Manish, PS Welcome.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

12.01.2024

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1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.0191/2019 under Sections 302/307/34 IPC and Sections 25/27 of the Arms Act, registered at PS Welcome.

2. The brief facts of the case are that on 31.03.2019 at about 8:00 PM, Shahid went to the house of the complainant i.e. Danish Khan @ Sonu and told him that his brother-in-law (*sala*), namely, Mehtab had abused him in filthy language and he would not leave him, to which the complainant asked him that Mehtab was not present at the house and he would make him understand. Thereafter, at about 10:30 PM, the complainant came down in his gali after hearing noise and saw that the petitioner/accused along with co-accused persons Salman @ Khan, Mohsin, Mushir and 2-3 other boys



were abusing and firing in front of his house while mentioning the name of Mehtab. The complainant came out and tried to stop them, however, the petitioner/accused fired upon Mehtab who was on the first floor and ran towards gali no.5. When the complainant tried to chase the petitioner/accused, all of them fired towards one more boy who was going ahead of the complainant and fled away from there while brandishing their weapons in the air.

3. Thereafter, immediately the complainant returned to his house and Mehtab was taken to GTB Hospital by his brother Aftab and Itafaq @ Dabu on scooty where he was declared as 'brought dead'.

4. Learned counsel for the petitioner submits that there are five accused out of which one accused, namely, Mushir, who happens to be the father of the present petitioner is absconding whereas the other three accused, namely, Nawab Salman @ Khan, Rayyan @ Rehan and Shahid @ Mota have already been enlarged on bail by an order of the Additional Sessions Judge dated 23.07.2019, 02.08.2019 and 22.10.2023, respectively.

5. He submits that the testimonies of all the public witnesses have been recorded and none of them have supported the case of the prosecution. He submits that in the status report the State has placed reliance on the DVRs whereas none of the witnesses from whom the DVRs were recovered have identified the said DVRs. In support of his contention, he has drawn the attention of the Court to the testimonies of PW-6, PW-7 and PW-8.

6. He further submits that the brothers of the deceased who were cited as eye witnesses, when entered into the witness box, did not support the case of the prosecution and were declared hostile. Even from their cross-examination nothing material could be elicited in support of the prosecution



case.

7. Further contention of the learned counsel is that the present petitioner is in custody since 01.04.2019 and as per nominal roll he has already undergone custody of 02 years and 09 months as on 10.12.2023.

8. He submits that the prosecution has cited as many as 30 witnesses and till date only 13 witnesses have been examined and the trial is not likely to be concluded any time soon.

9. In the backdrop of aforesaid circumstances, he urges the Court to release the petitioner on bail.

10. *Per contra*, learned APP for the State has argued on the lines of the status report. He submits that though the eye witnesses have turned hostile but there is a scientific evidence in form of a CCTV footage which clearly shows the involvement and complicity of the present petitioner in the commission of crime.

11. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the material placed on record.

12. A perusal of the testimonies of PW-6, PW-7 and PW-8 from whose possession the three DVRs attached to the cameras installed at their respective premises were recovered shows that they have not identified the respective DVRs when the same were shown to them in the court.

13. A perusal of the testimony of PW-6 also shows that he has stated that he did not put his signatures on the DVR, which was handed over to the Investigating Officer.

14. Insofar as the testimonies of eye witnesses, namely, Aftab who was examined as PW-1, Danish who was examined as PW-2 and Intekhab who was examined as PW-3, are concerned, it is clear that they have not at all



supported the case of the prosecution.

15. Though, the ultimate call on probative value of the evidence, the creditability and reliability of the testimonies of the witnesses, will be taken by the learned Trial Court at the stage of trial but for the purposes of considering the bail application, this Court cannot be unmindful of the fact that none of the prosecution witnesses have supported the case of the prosecution, which coupled with the long incarceration of approximately two years and nine months, furnishes the justification for grant of bail to the petitioner.

16. That apart, the prosecution has cited as many as 30 witnesses, out of which only 13 witnesses have been examined, therefore, the conclusion of trial is nowhere in sight.

17. Further, since all the material witnesses have been examined, there is no possibility of petitioner influencing the material witnesses in the event he is enlarged on bail.

18. A perusal of the nominal roll also shows that the petitioner does not have any criminal record.

19. Considering the aforesaid facts and circumstances in entirety, I am of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is granted regular bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall not leave the Delhi/NCR without prior permission of the Court.
- b) Petitioner shall appear before the Court as and when the matter is



taken up for hearing.

c) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.

d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

20. The petition is disposed of.

21. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

22. Order *dasti* under signatures of the Court Master.

23. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

VIKAS MAHAJAN, J

JANUARY 12, 2024
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