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

+ **BAIL APPLN. 4130/2023**

MOHD SUHAIL

..... Petitioner

Through: Mr. S.N. Qureshi and Mr. Noorain
Ali, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Richa Dhawan, APP for State
with SI Devendra Singh, PS Jafrabad.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

04.03.2024

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1. This is an application preferred on behalf of the Applicant Mohd. Suhail S/o Sh. Raqem, under Section 439 Cr.P.C. for grant of regular bail, in case FIR No. 99/2021 dated 12.03.2021 registered under Sections 307/34 IPC and Sections 25/27 Arms Act, 1959 at PS: Jafrabad. After the injured succumbed to the injuries in the hospital, Section 302 IPC was added. Charge Sheet was filed under Sections 302/34 IPC and Sections 25/27 of the Arms Act, 1959.

2. It is the case of the prosecution that on 12.03.2021, Applicant and the co-accused Mohd. Gazi came to the house of the Complainant and threatened his brother Al-Taslim (deceased) that if he did not repair the bike free of cost, they would teach him a lesson. In the evening on the same day, Complainant went to Gali No. 14/A and called his brother and ascertained from him if everything was fine. While talking, both of them went to a nearby stall of Nadeem bhai. Applicant and co-accused Mohd. Gazi were already present at the stall and started shooting at the deceased with a pistol.



Accused ran away from the spot and the deceased and the Complainant went inside the house. Being badly injured, deceased was taken to JPC Hospital in an auto and after initial treatment, he was referred to GTB Hospital as his medical condition was not good. A PCR call was made by the Complainant from the hospital stating that both the accused had shot the caller's brother and requesting that appropriate action be taken. On the basis of this statement, MLC and inspection of the place of incident as well as articles recovered, a Rukka was prepared and FIR was registered. In the supplementary statement, Complainant stated that the Applicant was standing along with the co-accused Mohd. Gazi, when he fired at his brother.

3. It is stated in the status report that Applicant confessed to the commission of crime, during interrogation. Applicant was a student of 12th class and he along with Mohd. Gazi had a quarrel with the deceased over repair of the motorcycle. Deceased was spreading rumours about Mohd. Gazi about which he was unhappy and made his mind to teach him a lesson. Mohd. Gazi brought a pistol and some live cartridges on 12.03.2021 and at 07:45 PM both went to search the deceased and finding him at the tea stall and provoked by his threatening, Mohd. Gazi took out his pistol and started to shoot. During investigation, Mohd. Gazi was apprehended at the instance of the Applicant and on conducting his personal search, a country made pistol was recovered from him. The injured succumbed to his injuries at GTB Hospital on 17.03.2021 and Section 302 IPC was added. Applicant is in judicial custody since 13.03.2021.

4. Learned counsel for the Applicant submits that Applicant is innocent and has been falsely implicated in the present case. Public witnesses i.e.



PW-1 Shaffaf, PW-3 Zeeshan, PW-5 Umar Mukhtiar and PW-6 Faizan have been examined and have not supported the case of the prosecution. Therefore, there is no possibility of material witnesses being threatened or intimidated or evidence being tampered. Only 07 witnesses have been examined so far out of the total of 32 witnesses cited by the prosecution and the trial is not likely to conclude soon. Applicant is in judicial custody since 13.03.2021 and since material witnesses including the alleged eye witness have been examined, no purpose will be served by keeping the Applicant in judicial custody any further. Applicant has clean antecedents and has never been involved in any crime prior to the registration of the present FIR. His jail conduct is 'satisfactory' and he has not violated the conditions of the interim bail granted to him for 15 days.

5. It is urged that the allegations are false and fabricated, as the Applicant was not involved in the incident of firing or any other overt act in the commission of the alleged crime. Recovery of the alleged weapon of offence is from the co-accused and evidence led so far shows that the weapon was planted. PW-1, the brother of the deceased and the only alleged eye witness stated in his examination-in-chief that on 12.03.2021, he came to know that his brother had received injury by fire and when he reached the spot, the deceased was conscious but he was not in a position to speak. With the help of his friends, he brought his brother down from the first floor and took him to JPC Hospital from where he was referred to GTB Hospital. PW-1 did not inform the Police the names of the assailants. PW-1 was asked to identify the Applicant and the co-accused and on seeing them, he deposed that he knew both of them as residents of the same locality but had not seen them causing injury to his deceased brother. In cross-examination by the



learned APP, PW-1 denied the suggestion that he had initially told the Police that the accused were firing on his brother with a pistol. PW-3 Zeeshan has also not supported the case of the prosecution and stated that he had not witnessed the incident and denied having made any statement to the Police that he had heard a noise of firing or saw the accused coming from the gali, where the alleged incident took place. PW-5 Umar Mukhtiar stated that he had received a call from PW-1 that his brother had sustained gunshot injury and when he reached at the spot, the deceased was unconscious. Deceased was taken to the hospital and succumbed to the injuries after 04 days. PW-5 had handed over his bloodstained clothes to the Police. During cross-examination by the APP, PW-5 denied that he had heard any noise of gunshot firing or seeing the accused at the relevant time. He also denied the suggestion that the deceased had told him on the way to the hospital that both the accused had fired the gunshot and/or that the witness was won over by the accused persons. It is argued that since the material witnesses have not supported the case of the prosecution at this stage, the prosecution evidence will only weaken as the trial proceeds since only formal witnesses remain to be examined and therefore, the Applicant be released on bail, subject to any condition that the Court may impose.

6. Learned APP, *per contra*, opposes the bail application on the ground that the allegations are serious and grave. There is a motive behind the killing of the deceased as apparently a day prior to the incident i.e. on 11.03.2021, the accused persons had threatened the deceased that if he did not repair their bike without service charge, he would face dire consequences. In furtherance of common intention to teach a lesson to the deceased, the accused reached his home on the next day on 12.03.2021 and



fired at the deceased and fled away. Weapon of offence was recovered from co-accused Mohd. Gazi. 03 prosecution witnesses, Zeeshan, Umar Mukhtiar and Faizan had taken the deceased to the hospital. During investigation, both the accused were arrested and a country made pistol along with three live cartridges was recovered from Mohd. Gazi. As per the postmortem report, cause of death was opined as septicemic shock due to infection of multiple internal organs. It is true that public witnesses have not supported the case of the prosecution and stated that they have not seen the incident of shooting, however, testimony of PW-1 Shaffaf discloses the motive behind the killing of the deceased. Ballistic report shows that cartridges recovered by the IO match with the pistol recovered from Mohd. Gazi and recovery witnesses are yet to be examined.

7. I have heard learned counsel for the Applicant and learned APP for the State.

8. As a matter of record, 07 prosecution witnesses have been examined so far. Public witnesses PW-1, PW-3, PW-5 and PW-6 have not supported the case of the prosecution. PW-1 is the brother of the deceased and allegedly the eye witness to the incident, who has resiled from his initial statement made to the Police and has turned hostile. Weapon of offence has not been recovered from the Applicant. It is a settled law that probative value of the evidence is a matter of trial and also that testimony of hostile witnesses can be relied upon with corroboration. However, it is open to the Court at the stage of considering an application seeking bail to form a *prima facie* opinion in support of the charge. From various judicial pronouncements, it is settled that parameters required to be considered while granting bail to an accused are: nature and gravity of the offences coupled



with severity of punishment, if the accused is convicted; chances of the accused absconding, if released on bail; reasonable apprehension of the accused influencing the witnesses or tampering with evidence; past antecedents; and behaviour, means, position and standing of the accused in the society. [*Ref.: Deepak Yadav v. State of Uttar Pradesh and Another, (2022) 8 SCC 559*]. Seriousness and gravity of the offences alleged to be committed by an accused is a crucial factor but depending on the factual matrix and circumstances of a given case, may not always be a singular factor to reject bail. [*Ref.: Prabhakar Tewari v. State of Uttar Pradesh and Another, (2020) 11 SCC 648*]. No doubt, the alleged offence in the present case is grave and serious but at this stage, it cannot be glossed over that public witnesses have been examined including the alleged eye witness and they have not supported the prosecution case. 27 witnesses remain to be examined and trial is not likely to conclude soon. As the material witnesses stand examined, there is no possibility of the Applicant threatening, influencing or intimidating the material witnesses. Latest nominal roll indicates that the Applicant is 25 years of age and has undergone 02 years 09 months and 21 days of custody period. The jail conduct is 'satisfactory'. Applicant was granted interim bail from 01.07.2022 to 15.07.2022, which concession he has not misused. Only formal witnesses remain to be examined and no useful purpose will be achieved by continuing the Applicant in judicial custody.

9. In the facts and circumstances of the case, present application is allowed. Applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs. 1,00,000/- with two sureties of the like amount to the satisfaction of the Trial Court of which one surety will be of a



person who is a permanent resident of Delhi and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;
 - ii. He shall provide his mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;
 - iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;
 - iv. He shall appear before the Trial Court as and when the matter is taken up for hearing;
 - v. He shall not indulge in any criminal activity or contact any witness and/or any other person associated with the present case; and
 - vi. He shall report to concerned IO once a month on every third Monday at 2:00 PM.
10. It is made clear that nothing stated in this order shall tantamount to expression of an opinion on merits of the case.
11. Application stands disposed of.
12. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

MARCH 4, 2024/pa/shivam