



\$~1

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

+ **BAIL APPLN. 4134/2023**

ABID @ SHAVEJ @ SHARUKHPetitioner

Through: Mr. Aditya Aggarwal, Mr. Ankit
Mutreja and Mr. Manoj Aggarwal,
Advocates.

versus

STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Amol Sinha, ASC for State with
Mr. Kshitiz Garg, Mr. Ashvini Kumar
and Ms. Chavi Lazarus, Advs.
IO Insp. Narender Kumar (Retd.) and
SI Suresh Kumar, PS New Usmanpur.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

03.07.2024

%

1. An application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for grant of regular bail in FIR No. 0549/2017 under Sections 302/34 IPC, registered at P.S.: New Usmanpur, Delhi. Chargesheet has been filed under sections 302/120B/212/34& section 27 of Arms Act.

2. In brief, as per the case of prosecution, Yasin (brother of deceased Ashif) alleged that on 12.07.2017, while he was going towards CNG Pump, Shastri Park to call his brother Ashif, he saw him sitting alongwith his friend. In the meanwhile, two motorcycles came from the parking behind Jag Parvesh Chander Hospital. Three persons were on the front motorcycle, which was being driven by one Munna. Further, Arshad, who was sitting on the rear seat, fired upon his brother Ashif. Also, Abid @ Savej @ Shahrukh (petitioner herein), who was present on other mobike fired upon Ashif, who



was thereafter rushed to the hospital by Yasin. Petitioner was arrested subsequently in another FIR under Section 25/54/59 Arms Act, registered at P.S. Seelampur, and on his disclosure, the weapon used by him in the commission of offence was recovered.

3. Learned counsel for the petitioner submits that out of three eye witnesses, the case of the prosecution has not been supported by two witnesses. He further disputes the presence of Yasin at the place of incident and submits that contradictions in this regard have come during the course of evidence. It is urged that conclusion of trial is likely to take some time, though material witnesses have been examined. Reliance is further placed upon order passed in BAIL APPLN. 1047/2019 by Co-ordinate Bench of this Court in ***Aman Khan vs. State*** to contend that petitioner is entitled to bail on account of long incarceration. It is also contended that the accused was released on bail during the Covid period and did not misuse the same.

4. On the other hand, application is vehemently opposed by learned ASC for the State. He submits that the case of the prosecution has been duly supported by Yasin (brother of the deceased), who was an eye witness. Further, his presence cannot be doubted since the MLC reflects that deceased had been admitted to hospital by Yasin. It is further submitted that the weapon of offence was recovered at the instance of petitioner and the bullet was found to be fired from same as per FSL result. It is emphasized that merely because the accused has been in incarceration for a long period, the same cannot be a ground for release of accused on bail in view of overwhelming evidence on record. It is pointed out that application filed on behalf of co-accused Amir @ Munna @ Shahzad has also been dismissed by Hon'ble Mr. Justice Saurabh Banerjee vide order dated 03.08.2023.



5. I have given considered thought to the contentions raised.

The role of the petitioner is stated to have been duly supported by Yasin (brother of deceased). The same is further corroborated by the recovery of alleged weapon used in commission of the offence at instance of petitioner and use of same is supported by FSL result. Since, the material witnesses have already been examined, the examination of the remaining witnesses can be completed in a time bound manner by learned Trial Court.

Considering the totality of facts and circumstances, serious nature of offence and evidence on record, no grounds are made out for releasing the accused on bail, at this stage. Application is accordingly dismissed.

Nothing stated herein shall tantamount to expression of opinion on the merits of the case.

A copy of this order be forwarded to learned Trial Court for information.

ANOOP KUMAR MENDIRATTA, J

JULY 3, 2024/akc