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

+ **BAIL APPLN. 2972/2024**

KHALID

.....Petitioner

Through: **M. Ayub Khan, Advocate**

versus

THE STATE NCT OF DELHI

.....Respondent

Through: **Mr. Amit Ahlawat, APP for State
with Ms. Shehnaz Khan, Advocate
Insp. Sudhir Kumar PS Jamia Nagar**

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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20.09.2024

1. This petition has been filed seeking regular bail in FIR No.396/2022 PS Jamia Nagar under Section 302 IPC & 25 Arms Act; petitioner was arrested on 1st October 2022 and has been in custody since. There is no previous involvement and his jail conduct is satisfactory.
2. As per the case of the prosecution, on the basis of call received from an unknown number, on 30th September 2022 at 4:20 pm, that there was gun shot injury to a boy at Azeem Dairy, Jamia Nagar, New Delhi, ASI Ashok Kumar rushed to the spot, where he was informed that injured had been shifted to Holy Family Hospital. Later he was in unconscious state and during treatment the injured was declared dead at 5:04 pm.
3. As per the status report, IO made enquiries from the relatives of the injured present in the hospital but no eye witness was available at that time. Rukka was prepared and case was registered. It is stated that subsequently, sisters of deceased Firdaus and Areeba were examined and stated that they



were present at the spot and saw their deceased brother having arguments with local boy Khalid and shot him with a firearm. Other witnesses were also examined. Subsequently, after arrest of petitioner, based on disclosure statement, the alleged weapon i.e. pistol was recovered.

4. Counsel for petitioner states that testimonies of all material witnesses are recorded and only official witnesses are left. Petitioner is aged 26 years and has been falsely implicated in this matter.

5. The basis of his contention is testimonies of sisters of deceased PW-1 and PW-2 both of whom had stated that they were present 10-15 meters from spot where they saw accused and deceased arguing and then saw him shooting the deceased. They confirmed that they knew the accused prior to the incident being their neighbour.

6. PW-1 stated in the cross examination that police had not visited the spot where the deceased was shot at and neighbours made enquires from her as to who fired the gunshot, but she did not tell the name to any of the neighbours. She confirmed that she had named the accused to her brother Mohd Asif when she went to home to call him.

7. PW-2 also seemed to state that she saw petitioner shooting deceased and her sister rushed back to the house to call brother Asif.

8. PW-3 Asif stated that he had not seen the accused on the spot as he was at home at that time and only got to know from his sister that a gunshot had been fired. He stated that only on the next day, 1st October 2022, his sister told him about Khalid having fired the gunshot. He stated that, even after burial of the deceased brother, they came back to their house and all family members were present and even there she did not disclose that Khalid had fired the gunshot.

9. The father of the deceased, PW-4, stated that when he returned to



house on 1st October 2022, and asked his daughters about what had happened, they told him that *'someone fired gunshot upon deceased Abdulla'*.

10. Counsel for petitioner therefore states that it would be highly unnatural for family members, particularly the sisters not to disclose the name of assailant to the immediate family for more than a day since the incident, particularly when deceased was in critical condition and when they claimed to have witnessed the incident. This, he contends, becomes more acute considering that the petitioner-accused was their neighbour and that they knew him quite well.

11. Taking into account contentions of petitioner's counsel, as well as fact that material witnesses have been examined, petitioner has no previous involvement and is in custody for the last 2 years, this court deems it fit to grant him bail.

12. Consequently, the petitioner 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 Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called



by the IO concerned.

v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.

vi. Petitioner will mark presence physically/virtually before the concerned I.O. every first and third Monday of every month at 4 p.m., and will be not kept waiting for more than an hour.

vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

13. Needless to state, but 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 merits of the matter.

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

15. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

16. Copy of order be given *dasti*.

17. Order be uploaded on the website of this Court.

ANISH DAYAL, J

SEPTEMBER 20, 2024/sm