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

+ **BAIL APPLN. 4229/2023**

NEERAJ @ KALA

..... Petitioner

Through: Mr. Rahul Singh, Mr. Nishant
Shokeen & Ms. Sumita Singh, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Ms. Richa Dhawan, APP with
Inspector Ravi Kumar, PS: BHD Nagar, for State.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

03.04.2024

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1. This application has been filed on behalf of the applicant Neeraj @ Kala S/o Sh. Nar Singh under Section 439 Cr.P.C. seeking regular bail in case FIR No.169/2019 dated 14.04.2019 under Sections 302/34 IPC read with Sections 25/27 of the Arms Act, 1959 registered at PS: Baba Haridas Nagar.

2. Status Report has been filed on behalf of the State. It is the case of the prosecution that on 13.04.2019 at 19:22 hours, a call was received vide DD No.34A regarding a person being shot by unknown persons near Nala Road, 200 meters away from Toll Tax No.3 and the same was marked to ASI Baljit, who went to the spot and found a body of a young teenager of sporty built, with a gunshot injury on his chest. Crime Team was called on the spot and strenuous efforts were made to identify the body but identification could not be done. Photograph of the deceased was circulated on WhatsApp and the spot was inspected and photographed by the District Crime Team and scene of crime was preserved. Hariom, the caller was examined, who stated that two persons riding on a Hero motorcycle had fired on the deceased,



after which he collapsed and the riders fled away, but due to poor visibility he was unable to see the faces of the riders.

3. It is further stated in the status report that in the meantime, some persons came to enquire about the deceased at PS: BHD Nagar and on reaching the spot, identified the deceased as Tarun S/o Late Ramkumar, aged 20 years. Body was sent for post mortem and after preparing the *Rukka*, present FIR was registered. Investigation revealed that deceased Tarun was on good terms with the main accused Neeraj @ Bandiya and was earlier involved in incidents of robbery, dacoity, etc. with Neeraj @ Bandiya and his associates. Neeraj @ Bandiya was arrested in a dacoity case in FIR No. 212/2017 and deceased Tarun was also involved in the commission of crime. Since Neeraj @ Bandiya had not disclosed the name of Tarun, he was obliged to him but later, their relationship became sour. Further investigation revealed that accused Neeraj @ Bandiya and Neeraj @ Kala (applicant) had shot and killed Tarun and thus on 23.04.2019 present FIR was registered against both the accused. Neeraj @ Bandiya was produced in Court on 24.04.2019 and an application was filed seeking permission to interrogate and arrest him. Neeraj @ Bandiya was interrogated and after sufficient oral, documentary and circumstantial evidence was collected, he was arrested and disclosed that weapon of offence and live rounds were purchased by him from one Mohit. As per his version, motorcycle of deceased Tarun was with the applicant. On 27.04.2019, Neeraj @ Bandiya was produced in Court and was remanded to 14 days judicial custody. Proclamation process was initiated against the applicant under Section 82 Cr.P.C. as he was absconding, but he was later arrested on 23.06.2019. Applicant disclosed during Police custody that he had left the motorcycle of



the deceased somewhere on Badli Road, Bahadurgarh and had destroyed his personal mobile phone.

4. It is further stated that during investigation, statements of Amit Gautam and Ravi were recorded under Section 161 Cr.P.C. and both stated that deceased had last gone to meet the accused persons on the day of the alleged incident. During investigation, various exhibits including the bullet, recovered from the body of the deceased during autopsy, were seized and sent for forensic and ballistic examination and thereafter charge sheet was filed. Trial is at the stage of prosecution evidence.

5. Learned counsel for the applicant states that evidence has revealed that deceased Tarun and Neeraj @ Bandiya were known to each other and were partners in commission of crimes such as robbery and dacoity, however, later they had a fallout due to some monetary issues. The alleged weapon of offence was recovered from Neeraj @ Bandiya, who was identified as the prime accused. During interrogation, Neeraj @ Bandiya had stated that the motorcycle of the deceased was with the applicant, which was false as no motorcycle was recovered from the applicant or any other person. Applicant was not named in the FIR and has been deliberately entangled in the alleged crime. Name of the applicant came up for first time in the statements of PW-7 Amit Gautam, cousin brother of the deceased and PW-10 Ravi, friend of the deceased, under Section 161 Cr.P.C. It was stated by Ravi that deceased was known to him but was not his friend. Tarun had never told him about his personal life or friends. PW-10 denied having any knowledge whether Tarun was a friend of Neeraj @ Bandiya and the applicant or that Neeraj @ Bandiya and Tarun were involved in any dacoity case. He denied the suggestion that on 13.04.2019, he was with the deceased



in the day time or that at about 05:30 PM both have gone towards Ballor road on Hero motorcycle of the deceased. He denied having met Neeraj @ Bandiya or the applicant on 13.04.2019 or having made phone calls to the deceased. PW-10 stated that he had called the deceased only once, as he was calling several other persons on that day in connection with the marriage of his sister. PW-7 Amit Gautam also did not support the case of the prosecution and in cross-examination denied having made any statement to the police that he was sure that Neeraj @ Bandiya and applicant had murdered Tarun or that the motorcycle and phone of the deceased might be with them. PW-7 also denied that on 13.04.2019 at about 05:30 PM, Tarun and Ravi had gone on the motorcycle of the deceased towards Ballor road fields, where both the accused persons met them. He deposed that he was not aware of anything about the case and the police had only recorded his name and address. The argument is that there is no evidence forthcoming against the applicant to show his involvement in the alleged crime and only formal witnesses remain to be examined and the case of the prosecution is not going to be strengthened any further.

6. It is further argued that applicant is innocent and has been falsely implicated. Material witnesses have been examined and there is no possibility of the applicant tampering with evidence and/or threatening the material witnesses. 23 witnesses remain to be examined by the prosecution and the trial is not likely to conclude soon. Applicant is a young boy of nearly 27 years of age and has been in judicial custody since June, 2019, save and except, for the period on which he was on interim bail under the HPC Guidelines. Applicant has clean antecedents and is not involved in any other offence.



7. Ms. Richa Dhawan, learned APP, *per contra*, arguing on the lines of the status report, states that the allegations against the applicant are grave and serious. Applicant had absconded initially and proceedings under Section 82 Cr.P.C. were initiated to arrest him. Even assuming that PW-7 and PW-10 have turned hostile during their cross-examinations, their testimonies in the examinations-in-chief cannot be totally ignored.

8. Heard learned counsel for the applicant and learned APP for the State.

9. Law with regard to grant or refusal of bail is fairly well settled. In ***Lt. Col. Prasad Shrikant Purohit v. State of Maharashtra, (2018) 11 SCC 458***, the Supreme Court observed that though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted, particularly, when the accused is charged of committing a serious offence. The Supreme Court delineated certain factors which are required to be considered viz: nature of accusation and severity of punishment in case of conviction; reasonable apprehension of tampering with evidence or threat to the complainant; and *prima facie* satisfaction of the Court in support of the charge. With this in the backdrop and for the limited purpose of deciding this application, Court has looked into the testimonies of the witnesses examined till date.

10. PW-7 Anil Gautam is a relative of deceased Tarun and stated that he did not personally know anything about Neeraj @ Bandiya or the applicant and knew nothing about the present case. He deposed that police did not record his statement and only his name and address were noted by the police. PW-7 denied the suggestion that he knew both the accused present in



the Court. He also denied the suggestion that he knew that deceased Tarun was involved in a case of dacoity at Lahori Gate, Delhi with Neeraj @ Bandiya or that Tarun was not arrested in that case because Neeraj @ Bandiya had not disclosed his name. He also denied having any knowledge of a fall out between the deceased and Neeraj @ Bandiya or that Neeraj @ Bandiya was annoyed with Tarun and had threatened to kill him. Friendship between Ravi and Tarun was known to PW-7 and he deposed that both went to the same gym. Significantly, PW-7 denied that on the date of incident i.e. 13.04.2019 at about 5:30 PM, deceased and Ravi had gone on the motorcycle of the deceased towards Ballor Road fields where accused persons met them or that Tarun had left Ravi at a juice shop and had returned to the accused persons after telling Ravi to call him after interval of every half an hour. Suggestion that he had stated to the police that he was sure that Neeraj @ Bandiya and applicant had murdered Tarun and the motorcycle and phone of Tarun might be with them, was categorically denied.

11. PW-10 Ravi deposed that Tarun was known to him but was not his friend although he visited the same gym as the witness. He stated that Tarun never disclosed to him anything about his personal life and friends or even those with whom he had any enmity. He deposed that he did not know anything about this case and his statement was not recorded by the police. During his cross-examination by the learned APP for the State, PW-10 denied having any knowledge of friendship between Tarun and Neeraj @ Bandiya and the applicant or that there was a quarrel between Neeraj @ Bandiya and Tarun two days prior to the alleged murder. Suggestion that PW-10 was with the deceased on 13.04.2019 at 05:30 PM and had



accompanied him to Ballor road on deceased's motorcycle, was denied. He also denied that Tarun had left him at a juice shop and returned to the accused on the said date. In fact, he deposed that he was busy on the said date due to his sister's marriage and had called Tarun on his phone only once, as he was calling several other persons on that day in connection with the marriage of his sister.

12. From the testimonies of PW-7 and PW-10, *prima facie* it appears that both the material witnesses have not supported the prosecution case. Their presence with the deceased or the accused persons on the date of the alleged incident is not forthcoming. The alleged weapon of offence and the motorcycle alleged to have been used on the date of the incident by the deceased were not recovered from the applicant, even as per the prosecution case. All material witnesses have been examined and there is no possibility of the applicant tampering with evidence or threatening and intimidating the material witnesses. 23 prosecution witnesses remain to be examined and trial is not likely to conclude soon and therefore the applicant, who is 27 years of age, cannot be kept indefinitely in jail. Nominal roll reflects that applicant is not involved in any other case and has clean antecedents. At this stage of trial, there is presumption of innocence in favour of the applicant and his being available to face trial and/or receive sentence, if convicted, can be ensured by imposing stringent conditions.

13. Considering the aforesaid facts and circumstances, I am of the view that applicant has made out a case for grant of bail during the trial. Accordingly, it is directed that the applicant be released on bail, subject to 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 by a person who is permanent resident of Delhi. Release on bail will be 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 communicate with or come in contact, directly or indirectly, with any prosecution witness; and
 - vi. He shall report to the IO on every third Monday at 11:00 AM.
14. Needless to state that any observation in the present order will not tantamount to expression of an opinion on the merits of the case.
15. Bail Application stands disposed of.
16. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

APRIL 03, 2024
B.S. Rohella/shivam