



2024:DHC:8244



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 23rd October, 2024*+ **BAIL APPLN. 3084/2024****KRISHAN YAD GAUR**

.....Applicant

Through: Mr. Subhas Singh, Ms.
Swati Singh, Mr.
Shubham Sonkar, Advs. &
Mr. Kiran Pal (Parokar).

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State.
SI Paramjeet, PS Ranhola.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present application is filed seeking grant of regular bail in FIR No. 863/2020 dated 20.09.2020, registered at Police Station Ranhola for offences under Section 307 of the Indian Penal Code, 1860 ('**IPC**') and Section 27 of the Arms Act, 1959 (**Arms Act**).

2. It is the case of the prosecution that on 20.09.2020, a PCR call was received regarding a shooting incident at RK Sweets, Harphool Vihar, Delhi. The victim, Rakesh Kumar, was allegedly shot by an assailant.



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3. Upon receiving the PCR call, the police reached the crime scene and found bloodstains both inside the shop and on the road outside. The victim was initially taken to Tarak Hospital, from where he was transferred to AIIMS Trauma Centre due to the severity of his injuries. His medical report described visible firearm injuries. Subsequently, the FIR in the present case registered.

4. On 21.09.2020, information was received that the victim had succumbed to his injuries whereafter offence under Section 307 of the IPC was replaced with Section 302 of the IPC.

5. In the post-mortem of the deceased, the cause of death was stated to be *“Hemorrhage due to firearm injury sustained to abdomen which is individually sufficient to cause death in ordinary course of nature.”*

6. Thereafter, Krishan Yad Gaur – applicant/accused was identified and arrested following the recovery of CCTV footage, which showed his presence near the crime scene and his motorcycle moving in a suspicious manner around the time of the incident. Upon his arrest, the police recovered a country-made pistol with live cartridges, along with bloodstained shoes.

7. After completion of the investigation, chargesheet in the present case was filed before the Learned Trial Court, against the accused person under Sections 302/506 of the IPC and Sections 25(1B)/27 of the Arms Act, and subsequently, charges have been framed.

8. The bail application preferred by the applicant before the learned Trial Court was dismissed by order dated 08.07.2024.



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9. The learned counsel for the applicant submits that the chargesheet in the present case has been filed, and charges have been framed by the learned Trial Court. Hence, the custody of the applicant is not required.

10. He submits that there are no eyewitnesses in the present case, and the testimony of the alleged eyewitness—the deceased's wife—contains contradictions. He points out that, during her examination before the learned Trial Court, she claimed to have witnessed the applicant firing a gunshot from a country-made pistol at the area below the deceased's armpit. She stated that the said incident was also witnessed by her son, Bunt. However, during interrogation, she had previously stated that both she and her son only heard the gunshot and rushed to the shop afterwards. He contends that these inconsistencies undermine the credibility of the alleged eyewitness and cast doubt on the prosecution's case.

11. He further submits that the applicant has been falsely implicated in the case, as evidenced by his conduct. The police arrested the applicant at his home the day after the alleged incident, and the fact that he did not attempt to flee suggests his non-involvement in the crime.

12. Lastly, he submits that the applicant has been in incarceration since 21.09.2020, has clean antecedents and as per the nominal roll, his conduct has been satisfactory.

13. On the other hand, the learned Additional Public Prosecutor (**APP**) for the state submits that the allegations against the applicant are grave and serious and the defences taken



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by the applicant are a matter of trial and cannot be looked into at the time of deciding whether the applicant is entitled to be released on bail. He submits that the applicant is actively involved in the heinous offence of murdering the deceased.

14. He submits that at the stage of consideration of an application seeking release on bail, the Court should not go into the credibility of the witnesses relied upon by the prosecution. He submits that a long period of custody alone cannot be a ground for releasing the applicant on bail in cases involving such heinous crimes.

15. He submits that the applicant's involvement in the alleged offence is evident from the CCTV footage obtained during the investigation. The footage clearly shows the applicant in the vicinity of the crime scene at the relevant time. Additionally, a motorcycle seen moving suspiciously in the footage has been traced back to the applicant, as it was found to be registered in his name.

16. He further submits that the forensic evidence strongly supports the prosecution's allegations. According to the forensic report, the accused's shoes were found to have bloodstains that matched the blood of the deceased. Moreover, the lead from the bullet that killed the deceased was analysed and found to be consistent with the ammunition fired from the country-made pistol that was recovered at the instance of the applicant.

17. He also submits that the eyewitness testimony further implicates the applicant. The wife of the deceased and their son, Bunty, both identified the applicant during their examination



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before the learned Trial Court as the person responsible for shooting the deceased.

18. He states *prima facie*, substantive evidence exists delineating the motive underpinning the commission of the alleged offence.

19. The Hon'ble Apex Court in catena of judgments has consistently emphasised the factors to be taken into account when considering bail application, which include: (i) the nature or gravity of the offense; (ii) the character of the evidence and circumstances unique to the accused; (iii) the likelihood of the accused evading justice; (iv) the potential impact of the release on prosecution witnesses and its societal repercussions; and (v) the probability of the accused engaging in tampering.

20. At the outset, it is noted that the offence charged against the applicant is heinous and grave, and if proved, is punishable with death or life imprisonment. The Hon'ble Apex Court in ***Satish Jaggi v. State of Chhattisgarh: (2007) 11 SCC 195***, held that the question of credibility and reliability of witnesses put up by the prosecution, should not be gone into by the Court at the stage while considering an application filed by the accused seeking bail; it is a matter to be determined by the learned Trial Court. Further, it has also been held in a catena of judgments that while considering an application of the accused seeking bail, the Court would not be justified in going into evidence on record at such depth so as to ascertain probability of conviction of the accused. The same is a matter of trial.



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21. The postmortem report of the deceased clearly establishes that the death of the deceased was caused due to firearm injury. *Prima facie*, this Court finds that there is substantial material on record that implicate the applicant in the commission of the alleged offence. Firstly, the CCTV footage obtained during the investigation shows the presence of the applicant in the vicinity and also captures a motorcycle moving suspiciously, which has been traced back to the applicant. Secondly, the forensic evidence points out that the applicant's shoes were found to have bloodstains that match the blood of the deceased. Moreover, the ballistic evidence - bullet lead recovered from the deceased's body matches the ammunition from the country-made pistol that was recovered at the behest of the applicant. Lastly, the wife and son of the deceased have identified the applicant as the person who shot the deceased. Despite minor contradictions raised by the defence, the identification by the witnesses, combined with other corroborative evidence, remains compelling.

22. The nature of the crime and the weight of the *prima facie* evidence suggest that granting bail at this stage would not be in the interest of justice.

24. It is evident that the grant of bail should not be arbitrary or whimsical. The Hon'ble Apex Court in *Neeru Yadav v. State of U.P. : (2014) 16 SCC 508*, where the Court, while setting aside the bail order, made the following observation:

"16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that liberty is a



priceless treasure for a human being. It is founded on the bedrock of the constitutional right and accentuated further on the human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilised society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilised. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to the rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

25. Being conscious of the fact that individual liberty holds immense significance, it is incumbent upon the Courts to examine and evaluate, *albeit* briefly, factors such as the *prima facie* case, the severity of the crime, and the accused's likelihood to tamper with evidence, among other considerations.



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26. The charges in the present case have already been framed and the allegations, at this stage, cannot be termed as frivolous. The credibility of the defences asserted by the applicant would be assessed during the trial.

27. Accordingly, taking into account the submissions made by the learned counsel for the parties, and material available on record, this Court is of considered opinion that *prima facie*, there are serious allegations against the applicant which at this stage cannot be said to be without any material.

28. Considering the facts and circumstances of this case, this court is not inclined to grant bail to the applicant at this juncture.

29. It is made clear that the observations made in the present case are only for the purpose of considering the bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

30. In view of the above, the present bail application is dismissed.

AMIT MAHAJAN, J

OCTOBER 23, 2024