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

+ **BAIL APPLN. 3174/2024 & CrI.M.As.26543-44/2024**

AFSAR ALI

.....Petitioner

Through: Mr. Anoop Jorge Chaudary, Mr.
Misbah Bin Tariq, Mr. Mohd.
Nadeem Khan, Mr. Azhar Faiz Khan
and Mr. Haider Farooq, Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for State
with SI Khushbu

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER
27.11.2024

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1. The instant application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as the “BNSS”) has been filed on behalf of the applicant/petitioner seeking grant of bail in FIR bearing No.146/2024, dated 22nd May, 2024, registered at Police Station – Laxmi Nagar, Delhi, for offences punishable under Sections 307/336/392/506(2)/34 of the Indian Penal Code, 1860 (hereinafter “IPC”) and Sections 25/27 of the Arms Act, 1959.

2. Mr. Anoop Jorge Chaudary, learned senior counsel appearing on behalf of the petitioner submitted that the petitioner herein is the father of co-accused Danish Ali and Ameer, and the present case involves a matrimonial dispute between the co-accused Danish Ali and his wife, who is also the sister of the complainant. It is submitted that although the dispute is



purely matrimonial in nature, the allegations levelled against the petitioner have given criminal colour to the present case which shows that the FIR is false and fabricated.

3. It is submitted that on plain reading of the FIR, it is revealed that there are specific allegations of giving gunshot injury to the injured Bilal and as per the prosecution version, the alleged offence was committed on 21st May, 2024 and the FIR was registered on 22nd May, 2024, i.e. after a lapse of 24 hours from the incident, without any explanation of the said delay. It is further submitted that the offence under Section 307 of the IPC is not made out against the petitioner as the gunshot was not caused with the intention of causing death to the injured Bilal, but was only with the intent to create fear amongst the other side.

4. It is submitted that as per the FIR, the role of giving gunshot injury is attributed to the co-accused Javed and the petitioner herein has no knowledge whether co-accused Javed was carrying any gun or firearm with him, therefore, there is no common intention of the accused persons to commit the offence and the police has not collected any substantive material to prove the same.

5. It is further submitted that nothing has been disclosed by the accused persons in their disclosure statements *qua* hatching the criminal conspiracy to commit the alleged offence.

6. It is submitted that the petitioner is an aged and innocent person, and has no role to play in the offences alleged against him. It is further submitted that the petitioner is languishing in jail since 21st May, 2024, i.e. for more than 6 months and has clean antecedents. It is further submitted that the petitioner is a permanent resident of Delhi and has deep roots in the



society, therefore, he is not at flight risk. He further undertakes that the petitioner shall abide by all the terms and conditions imposed by this Court while granting him bail.

7. In view of the foregoing submissions, it is prayed that the petitioner be released on bail.

8. *Per Contra*, Ms. Richa Dhawan, learned APP for the State has vehemently opposed the instant bail application submitting to the effect that as per the FIR, wife of the accused Danish Ali, namely, Seema had gone to her parental home for treatment and all the accused persons came to her house and tried to snatch the child of Seema from the complainant Rahat Parveen who is Seema's sister.

9. It is further submitted that there is no force in the arguments that the accused did not hatch any criminal conspiracy and there was no common intention to cause death of injured Bilal as it is evident from the CCTV camera that the all the accused persons had gone to the complainant's place, and the same has also been alleged in the aforesaid FIR.

10. It is further submitted that the incident in question had occurred on 21st May, 2024 at around 11:00 PM and the aforesaid FIR was lodged at around 10:30 AM on the very next day, i.e. on 22nd May, 2024, therefore, there is no delay in registering the FIR, and the same is not a cogent ground for grant of bail. Learned APP further submits that it is highly probable that if the petitioner is released on bail, he may influence the witnesses.

11. Heard learned counsel for the parties and perused the record.

12. In *State of Haryana v. Dharamraj.*, 2023 SCC OnLine SC 1085, the Hon'ble Supreme Court reiterated the relevant considerations while granting bail and observed that the nature and gravity of the accusation, character of



the accused, likelihood of the offence being repeated, apprehension of witnesses being influenced etc. are the primary considerations to be borne in mind while granting bail. The relevant portion of the same is as under.

“7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide grant of bail in Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 and Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the relevant principles were restated thus:

‘9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(8) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and



*(viii) danger, of course, of justice being thwarted
by grant of bail. '..”*

13. This Court has perused the contentions made in the instant application, status report as well as the FIR. The address given by the petitioner has been verified by the State and found to be correct. It is admitted fact that there was a family dispute which gained criminal colour as all the accused persons went to the house of the complainant who is the sister of the wife of the accused Danish Ali, namely, Seema who had went to her paternal home as she was not keeping well. Further, the petitioner herein had gone to the house of the complainant to bring back her sister and her child.

14. It is also an admitted fact that no specific role has been assigned to the petitioner and now Ms. Seema, i.e., wife of the co-accused Danish Ali has started living in her matrimonial home with her family.

15. Keeping in view the contentions and the arguments advanced by the learned counsel for the parties, age of the petitioner, nature of the offences, i.e., the said offences are arising out of a family dispute, nature of injuries suffered by the injured Bilal, the period for which the petitioner has already been in jail, i.e., more than 6 months and he is not at flight risk as well as the fact that no specific role has been assigned to the petitioner in the FIR, this Court is inclined to allow the instant petition seeking regular bail.

16. Accordingly, it is directed that the petitioner be released in bail on his furnishing personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) with two sureties of like amount to the satisfaction of the Jail Superintendent/Court concerned subject to the conditions as follows:-

a) the petitioner shall under no circumstances leave India without prior



- permission of the Court concerned;
- b) the petitioner shall appear before the Court concerned as and when required;
 - c) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, and/or attempt to tamper with the evidence;
 - d) the petitioner shall provide his mobile number(s) and keep it operational at all times;
 - e) the petitioner shall commit no offence whatsoever during the period he is on bail;
 - f) in case of change of residential address and/or mobile number, the same shall be intimated to the Court concerned by way of an affidavit; and
 - g) The petitioner shall report to the jurisdictional Police Station on 15th day of every calendar month.
17. Accordingly, the instant bail application along with the other pending applications, if any, stands disposed of.
18. Copy of this order be sent to the Jail Superintendent for compliance.
19. It is made clear that any observations touching upon the merits of the case are purely for the purpose of deciding the question of grant of bail by this Court and shall not construed as an expression of final observations in the proceedings pending before the learned Trial Court.

CHANDRA DHARI SINGH, J

NOVEMBER 27, 2024

Rt/ryp

[Click here to check corrigendum, if any](#)