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

+ **BAIL APPLN. 3175/2024**

AQUIB RAZA @NATA@SONUPetitioner

Through: **Mr.Jitendra Kumar Singh,**
Mr.Prasahat Kumar,
Mr.Manish Kumar,
Mr.Sanjeev Verma and
Mr.Aman, Advocates

versus

THE STATE OF NCT DELHI (THROUGH SHO
SAHEEN BAGH)Respondent

Through: **Mr.Ajay Vikram Singh,**
APP for the State with SI
Kailash and SI Akshay, PS
Shaheen Bagh

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **04.10.2024**

Crl.M.A. No. 26550/2024 (Exemption)

1. Exemption allowed, subject to just exceptions.
2. The application stands disposed of.

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3. The present petition is filed seeking regular bail in FIR No. 175/2023 dated 02.06.2023, registered at Police Station Shaheen Bagh, for offences under Sections 307/34 of the Indian Penal Code, 1860 ('**IPC**') and Sections 25/27 of the Arms Act, 1959.
4. The present FIR was registered at the instance of the complainant, namely, Aushaf Bhati. The brief facts of the case are that the applicant along with co-accused is alleged to have threatened to kill the complainant and abused him for having

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allegedly beaten the applicant earlier. It is alleged that when the complainant objected, the accused persons fired their respective pistols at him.

5. During the course of investigation, the CCTV footage of the incident was recovered from a camera installed at a nearby shop. It is alleged that the same shows that the applicant is the person who fired the gunshot.

6. The learned counsel for the applicant submits that the applicant has clean antecedents and he has been falsely imprisoned in the present case.

7. He submits that even as per the CCTV footage, the applicant is not seen committing the alleged crime. He further submits that the learned Trial Court had perused the CCTV footage and opined that faces of the accused persons were not visible in the CCTV footage.

8. He submits that the complainant had deposed during his examination that he has poor vision due to old age and he could not properly see the accused in the CCTV footage due to the same. He submits that the prosecution has also not collected any CDRs to establish the presence of the application at the place of crime.

9. He further submits that although the bullet which was allegedly fired has matched with the pistol which was allegedly recovered at the instance of the applicant, however, the same had been planted. He submits that the recovery of the pistol was not carried out in the presence of any independent witness.

10. He submits that the applicant is in custody for more than an year and he is the sole bread earner in his family which comprises of his father, mother, wife and two minor children.



11. The learned Additional Public Prosecutor for the State vehemently opposes the grant of bail to the applicant. He submits that serious allegations have been levelled against the applicant and the maximum punishment for offence under Section 307 of the IPC is 10 years.

12. He submits that the applicant has been identified by the complainant as well as his son.

13. He submits that the applicant resides in the same locality as that of the complainant and if the applicant is released on bail, there is a possibility that he might threaten or influence the complainant and his family members.

14. I have heard the counsel and perused the record.

15. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

16. At the same time, the period of incarceration is also a relevant factor that is to be considered.

17. It is undisputed that no injury was caused to the complainant in the present case. The allegation against the applicant, at the highest, is that he fired a gunshot which hit the gate and did not hit the complainant. In the absence of injury, whether the shot was fired with intention to kill would be subject



matter of trial and cannot be presumed at this stage.

18. The applicant has disputed his presence and argued that the CCTV does not confirm his presence at the spot of the incident. It is argued that the face of the applicant is not clearly visible in the CCTV footage. It is also pointed out that the said fact has been noted by the learned Trial Court in order dated 05.07.2024 whereby the bail application filed by the applicant was dismissed.

19. It is argued by the learned APP that the complainant has identified the applicant as one of the assailants. The learned counsel for the applicant has taken this Court through the examination of the complainant wherein the complainant had stated that he has a weak vision due to his old age. The complainant had cited the same as the reason as to why he could not see the accused properly in the video.

20. It is not denied that CDRs were not collected by the prosecution to establish the presence of the applicant at the place of the incident.

21. It is trite law that an accused can be convicted solely on the basis of the testimony of the witness if the same is reliable and inspires confidence. However, at this stage, *prima facie*, some doubt is cast on the involvement of the applicant in the commission of the offence.

22. The veracity of the testimony of the complainant and whether the applicant was one of the assailants who had any intention to kill the complainant is to be seen during the course of the trial.

23. The applicant has been incarcerated since 02.06.2023. The investigation is already complete and the prime witnesses



have already been examined.

24. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time.

25. It is not disputed that the applicant has his parents, two minor children and wife to be taken care of.

26. It is also pointed out that the applicant has no previous adverse antecedents.

27. Any apprehension regarding the applicant influencing the trial or committing further crime can be taken care of by imposing appropriate conditions.

28. In view of the above, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

29. The applicant is therefore directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicants shall under no circumstance leave the boundaries of Delhi without informing the concerned IO;
- c. The applicant shall appear before the learned



Trial Court on every date;

d. The applicant shall provide the address where he shall reside upon his release, which should be at least 5 KM far from the locality where the complainant resides, subject to the satisfaction of the concerned IO/SHO and shall not change the address without informing the concerned IO/ SHO;

e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

30. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

31. It is clarified that any observations made in the present order are for the purpose of deciding the present 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.

32. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 4, 2024
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