



\$~8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3183/2024 & CRL.M.A. 26594/2024**
UMAR FAROOQ @ FAROOQPetitioner
Through: Mr. Vineet Jain, Adv.
(through VC)

versus

STATE OF NCT OF DELHIRespondent
Through: Mr. Ajay Vikram Singh,
APP for the State
Inspector Manmeet Singh,
PS- Khyala

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
04.10.2024

1. The present application is filed seeking regular bail in FIR No. 269/2017 dated 22.08.2017 registered at Police Station Khyala for offences under Section 307 of the Indian Penal Code, 1860 ('IPC'). Chargesheet in the present case has been filed under Sections 302/324/120B/34 of the IPC.
2. The FIR was initially registered under Section 307 of the IPC, noting that the victim, namely, Akbar was found injured with stab injuries inflicted by assailants, namely, Afzal Khan @ Monu and Mohd. Subhan.
3. The victim later succumbed to injuries on 23.08.2017. It is the case of the prosecution that the victim was, allegedly, having romantic relationship with the wife of the accused Sharif Khan due to which Sharif Khan had hired the applicant Umar Farooq @ Farooq, Afzal Khan @ Monu and Mohd. Subhan to kill the victim.



4. Accused, Saif Khan @ Shakil @ Shibu is the son of the accused, Sharif Khan.
5. It is alleged that on the date of the incident, that is, on 22.08.2017, the applicant was riding a motorcycle and came with the assailants, Afzal Khan @ Monu and Mohd. Subhan and met the deceased and his brother, namely, Nazre Imam.
6. It is alleged that the applicant took out two knives and gave it to the assailants, Afzal Khan @ Monu and Mohd. Subhan who then inflicted injuries on the victim.
7. It is alleged that the assailants, at that time, told the victim that the injuries have been inflicted at the instance of the accused persons, Sharif Khan and Saif Khan @ Shakil @ Shibu.
8. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.
9. He submits that even if the case of the prosecution is taken at the highest, the applicant was only riding the motorcycle in which the assailants also came at the place of the incident.
10. He submits that the admitted case of the prosecution is that the injuries were inflicted by the accused, Afzal Khan @ Monu and Mohd. Subhan.
11. He submits that the applicant has been implicated only on the basis of the disclosure statement of the brother of the victim who claims to be accompanying the victim at the time of the incident.
12. He further submits that the statement of the brother of the victim is even otherwise not reliable and the same was not given on the same day and was given more than 24 hours after the incident.
13. He submits that the prosecution has not been able to establish any motive against the applicant.



14. He lastly contends that the applicant was arrested way back on 24.08.2017 and still more than fifteen witnesses remain to be examined and the trial is not likely to conclude in near future.

15. He submits that the applicant was released on interim bail on an earlier occasion and has not misused the liberty.

16. *Per contra*, the learned Additional Public Prosecutor for the State opposes the grant of any relief to the applicant. He submits that the applicant along with co-accused persons Afzal Khan @ Monu and Mohd. Subhan were hired by Sharif Khan and Saif Khan @ Shakil @ Shibu to inflict injuries on the victims. He submits that the applicant drove the motorcycle and carried the assailants to the place of incident. He submits that the applicant took out two knives and gave it to the assailants. He further submits that the eye witness PW1 has supported the case of the prosecution.

17. The Hon'ble Supreme 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.

18. In the present case, the eye witness PW1, in his statement, has stated that when he alongwith the deceased was going to the wielding shop, the applicant alongwith co-accused Afzal Khan @ Monu and Mohd. Subhan reached there on a motorcycle. He stated that the applicant was driving the motorcycle, and stopped it at a distance of 30-40 m from the victim and PW1. He further



stated that the applicant took out two knives which he was carrying with him, and the applicant gave the said knives to the assailants Afzal Khan @ Monu and Mohd. Subhan. He also deposed that the assailants then inflicted injuries on the victim.

19. The only allegation against the applicant is that he was driving the motorcycle, and carried the assailants to the place of incident. It has also been alleged that the applicant took out two knives and gave it to the assailants Afzal Khan @ Monu and Mohd. Subhan. At this stage, it is not the case of the prosecution that any injury was inflicted on the victim by the applicant.

20. The evidence at this stage against the applicant is the statement of the complainant. No other eye witness is stated to be prosecution witness.

21. On being pointedly asked, it is stated that only 28 out of the 45 witnesses have been examined. It is trite that long period of incarceration is an important factor to be kept in mind while considering the application for bail. It cannot be denied that the applicant was arrested on 24.08.2017 and the trial is not likely to conclude in the near future.

22. The Hon'ble Apex Court in the case of *Union of India v. K.A. Najeer* : AIR 2021 SC 712, has held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

23. The continued incarceration of the applicant will result in the denial of his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in the near future.

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.

25. The applicant is stated to have clean past antecedents. Admittedly, all the material witnesses have been examined. There is no possibility of the applicant influencing the material witnesses in the event of him being enlarged on bail.

26. It is also seen that the applicant was admitted on interim bail on an earlier occasion, and he has not misused the liberty granted to him.

27. It is not stated that the applicant is required for further investigation, however, appropriate conditions ought to be put to allay the apprehension of tampering the evidence and hampering the witness.

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 ₹50,000/- 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 applicant 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, after his release, appear before the concerned Investigating Officer once in every week;



- e. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/ SHO;
- f. 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

“SS”