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

+ **BAIL APPLN. 3342/2024**

SHARIF KHAN

.....Petitioner

Through: Mr. G.S. Sharma, Mr.
Narayan Wadia, Mr. R.A.
Sharma, Ms. Jyoti Saini &
Mr. Neil Wadia, Advs.

versus

STATE GNCT OF DELHI

.....Respondent

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

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1. The present application is filed seeking regular bail in FIR No. 269/2017 dated 22.08.2017, registered at Police Station Khyala, for offence under Section 307 of the Indian Penal Code, 1860 ('IPC'). Chargesheet has been filed against the applicant for the offences 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. The victim later succumbed to his injuries on 23.08.2017.

3. It is the case of the prosecution that the victim was, allegedly, having romantic relationship with the wife of the applicant due to which the applicant had hired co-accused persons— Umar Farooq @ Farooq, Afzal Khan @ Monu and Mohd. Subhan to kill the victim.



4. It is alleged that on 22.08.2017, when the victim along with his brother were going from their home to the welding shop, the co-accused persons, that is, Umar Farooq @ Farooq, Afzal Khan @ Monu and Mohd. Subhan came their on a motorcycle.
5. It is alleged that the co-accused Umar Farooq @ Farooq gave a knife to both co-accused Afzal Khan @ Monu and co-accused Mohd. Subhan who then inflicted injuries on the victim.
6. It is alleged that the assailants told the victim that the injuries had been inflicted at the instance of the applicant and his son– co-accused Saif Khan @ Shakil @ Shibu.
7. The learned counsel for the applicant submits that the applicant has clean antecedents and he has been falsely implicated in the present case.
8. He submits that the testimony of the brother of the victim (PW1) does not inspire confidence as he made no attempt to save the life of his brother by calling police or raising alarm after he ran from the spot of the incident.
9. He submits that PW1 has categorically deposed that he has not been threatened by the accused persons. He submits that all the material witnesses have already been examined.
10. He submits that the applicant was arrested on 08.09.2017 and he has spent more than four years in custody. He submits that only 28 out of the 45 witnesses have been examined and the trial is likely going to take a long time. He submits that no purpose will be served by subjecting the applicant to further incarceration.
11. He submits that the applicant did not misuse the liberty granted to him when he was enlarged on bail due to the pandemic.
12. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the



applicant.

13. He submits that the offences alleged against the applicant are heinous in nature and it is alleged that the entire conspiracy to murder the victim had been hatched by the applicant.

14. 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.

15. In the present case, the eye-witness PW1, in his statement, has stated that the victim had told the police before his death that the incident had been caused at the instance of applicant, and his son co-accused Saif Khan @ Shakil @ Shibu. He stated that prior to the incident; a quarrel had also broken out between the son of the applicant and the victim. He further stated that prior to the incident; the applicant had come to his house, and had threatened to kill the victim.

16. It is the case of the prosecution that the applicant had conspired with his son co-accused Saif Khan @ Shakil @ Shibu, and hired co-accused Umar Farooq @ Farooq, Afzal Khan @ Monu and Mohd. Subhan to kill the victim. It is not the case of the prosecution that any injury itself was caused to the victim by the applicant. The allegations against the applicant is thus that he in conspiracy with his son co-accused Saif Khan @ Shakil @ Shibu, and other co-accused persons has killed the victim.

17. The motive is sought to be put on the applicant by alleging that the victim had a relationship with the applicant's wife. The



motive is sought to be proved on the strength of the alleged statement attributed to the assailants and the eye witness–PW1. It is not disputed that the wife of the applicant has not been named as a witness to prove the case of the prosecution. The evidence at this stage is the alleged disclosure statement of the assailants. The same would be tested during the course of further trial and at the time of final arguments.

18. While the allegations against the applicant are serious in nature, this Court cannot also overlook that the applicant has been in custody for more than 5 years. On being asked, it is stated that only 28 out of 45 witnesses have been examined.

19. 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 08.09.2017 and the trial is not likely to conclude in the near future.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.



27. 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.

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

AMIT MAHAJAN, J

OCTOBER 4, 2024/“SS”