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

+ **BAIL APPLN. 3390/2024**

HASSAN ABBAS @ BABUA

.....Petitioner

Through: Mr Javed Khan & Mr Suhail Azhar,
Advocates (thru VC)

versus

THE STATE GNCTD THROUGH SHO GOKUL PURI

.....Respondent

Through: Mr. Amit Ahlawat, APP for State
with Ms. Shehnaz Khan, Adv.
SI Arvind Verma, PS Gokulpuri

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

13.11.2024

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1. This petition has been filed seeking regular bail in FIR No.117/2017 registered at Police Station Gokulpuri under Sections 307 IPC and Section 27 Arms Act. Chargesheet was filed under Section 302 IPC and Section 25/27 Arms Act. Petitioner was arrested on 28th March 2017.

2. As per the nominal roll, petitioner has undergone custody for about 4 ½ years, has no previous involvements; his jail conduct is satisfactory. He has been on interim bail from May 2021 to May 2023, from August 2023 to October 2023, and from March 2024 to June 2024 and there is no assertion from the State that he had misused his liberty.

3. The case of the prosecution is that, on a PCR call on 26th March 2017, the police team reached the spot at Brijpuri, Delhi and found that an empty cartridge on the ground floor, and blood stains were observed on the stairs from the ground floor to the first floor, and a white sports shoe was found in the middle of the stairs. The police team reached GTB Hospital



and found the victim Ghulam Abbas under treatment, and unfit to give a statement. Subsequently, the FIR was registered under Section 307 IPC and Section 27 Arms Act.

4. Later, the nephew of the victim was found in the hospital and he stated that he was residing at his uncle's house since the last 4-5 months. He stated that his uncle knew about the illicit relationship between his aunt, Tafsir Fatima (*wife of the deceased victim*) and Hassan Abbas *alias* Babua, petitioner herein. The uncle, along with the aunt, came to Delhi, along with their children, but the petitioner continued with his relationship with the aunt. On 26th March 2017, at 9.15 am, Hassan Abbas came with a gun and started abusing and challenging Gulam Abbas. On hearing this, Gulam Abbas came to the stairs and the petitioner pointed a *bandoor* towards him with the intention to kill him. The uncle and the aunt caught hold of the barrel and moved it down, but Hassan Abbas fired the bullet which hit the victim near his right knee, and blood started flowing out.

5. Investigation ensued, and Kirpal Singh Tomar, who was residing in the neighbourhood of victim and was walking on the street on the date of incident, was also interrogated. The chargesheet was filed and the trial has since commenced. Out of 30 witnesses, 23 witnesses have been examined so far.

6. Counsel for the petitioner relied upon testimonies of PW-1, the nephew of the deceased, PW-14, Radhey Shyam who was asked to join the investigation, PW-17 HC Ram Singh, as well as testimonies of recovery officials PW-23 and PW-19, the doctors from FSL.

7. PW1 stated that his uncle had told him that the accused had taken a loan of Rs. 5 lakhs from him, but was not returning the money, and there was some monetary dispute. He stated in his chief that he had witnessed



accused having threatened his uncle on 26th March 2027 at about 9:15 am. According to him, he stated that accused had started putting cartridges in his gun he was carrying, however, he does not make any statement regarding the incident of firing.

8. In his cross examination, he stated that he was not aware if there was any illicit relationship between the accused and wife of his uncle or that any altercation had taken place between the accused and his uncle. He denied the suggestion that the accused had made a call on his mobile, or that he had identified the voice of the accused, or that he had threatened to kill him. Importantly, he states, as per the counsel for petitioner, that at the time of the incident in question, he was not present at the spot, and was away at that time.

9. Testimony of PW-14 Radhey Shyam has also been adverted to by the counsel for petitioner as Radhey Shyam was asked to join the investigation. He stated that on 29th March 2017, at about midnight, when he was offloading material from a truck and was returning home, police were wrapping certain articles including a double barrel gun in paper. He stated in his cross examination that he could not verify the recovery of the said articles as the same were not seized in his presence. Further, he could not identify the accused as well.

10. Statement of PW-17 HC Ram Singh has also been relied upon where he has stated that, on enquiry, there was no eye-witness which was found, and it was informed that some unknown person had fired on the victim. He stated that Rizwan (*nephew of the deceased*), as an eye-witness, came forward and got his statement recorded by the IO.

11. As regards the testimony of PW-19 Dr. Susheel Bansotra, counsel for petitioner states that the doctor was not able to comment whether the victim



had sustained two bullet injuries at the time of incident or not. He further stated that history of offence does not mention the exact place of incident and as to who had fired upon the victim.

12. Counsel for petitioner further relies upon cross examination of PW-23 ASI Anil who was the recovery official. In his cross examination, he stated that the shoe was not recovered in his presence, and he has inadvertently identified the same in his examining-in-chief. He further stated that the shoe was not in wearable condition and also that “*I cannot say if the said shoe has been planted or not.*”. He further stated that white shirts and pants were easily available in the market.

13. Regarding the arrest at Anand Vihar bus stand, where they had gone in a gypsy of the S.H.O., he stated that he didn't know the name of the driver, nor the number of the gypsy, and that no statement of driver was recorded by the IO in his presence. He further stated that the IO did not serve notice on any public person at Anand Vihar bus stand, no bus ticket was recovered from personal search of petitioner/accused Hassan Abbas. Even though a mob was gathered, he did not ask the name and address of the number of any of the members of the mob. He further stated that, as regards the search at the house of the victim, he could not state as to how many rooms were constructed on the ground floor of the house, or the details of the locality. He stated that the IO did not record the statement of any of the occupants of the house in the vicinity. The key of the room of the house was not seized and he does not know to whom the key was handed over since no seizure memo was prepared of the key. On this basis, counsel for petitioner states that there is no evidence which could implicate the petitioner.

14. Opposing this, APP for the State points out to examination-in-chief



of PW-1 where he narrates the events. It is contended that cross examination was conducted after 1 year and there is a possibility that hostile testimony in the cross-examination was influenced and under coercion. Testimony of PW-6 is relied upon who had seen the petitioner with the gun and heard the firing on that day, and further relies upon the ballistic report which relates to the DNA profile from the source of victim's clothes with that of accused, as well as cartridge which was identified as having been fired from the shotgun.

15. Having considered the respective contentions of the parties, this Court is of the opinion that various aspects of veracity of testimonies of witnesses will have to be ascertained, which are subject matter of the ongoing trial. At this stage, considering that petitioner has been in custody for about 4 ½ years, has no previous involvements, has satisfactory jail conduct, has been on interim bail from time to time, as noted above, without any allegation of any misuse of his liberty, as also considering contentions of petitioner's counsel with respect to hostile testimonies of PW-1, Pw-14, PW-23, and PW-19, as noted, the petitioner is granted bail.

16. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter



is taken up for hearing.

iv. Petitioner shall join investigation as and when called by the IO concerned.

v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.

vi. Petitioner will mark presence physically before the concerned I.O. every Monday at 4 p.m., and will be not kept waiting for more than an hour.

vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

17. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

18. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

19. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

20. Order be uploaded on the website of this Court.

ANISH DAYAL, J

NOVEMBER 13, 2024/sm/sc