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

+ **BAIL APPLN. 3483/2024**

ASHIK @ BHURA

.....Applicant

Through: Mr. Pradeep Chowdhary
and Mr. Lalit Kumar
Bhati, Advs.

versus

STATE GNCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with
Insp. Ravinder Dagar, PS
Subzi Mandi.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

28.10.2024

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1. The present application is filed seeking regular bail in FIR No. 492/2022 dated 16.09.2022, registered at Police Station Subzi Mandi, for offences under Sections 302/120B of the Indian Penal Code, 1860 (IPC) and Sections 25/27 of the Arms Act, 1959.
2. Briefly stated, the FIR was registered pursuant to an information received from the Hindu Rao Hospital regarding one person who had been brought dead to the hospital.
3. On an enquiry, it was found that on the night of the alleged incident, that is, 15.09.2022-16.09.2022, the deceased, namely, Nazim, was at the applicant's residence with some friends, having a party. During the gathering, it was alleged that the co-accused - Sujal and the applicant, accused Nazim of leaking



information about their group to others. Subsequently, the co-accused - Amaan shot Nazim.

4. It was further alleged that an eye-witness – Durgesh, took the deceased to the ground floor and then transported him to the hospital where he was declared as ‘brought dead’.

5. The applicant was arrested on 12.02.2023 and is in custody since then.

6. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.

7. He submits that even as per the case of the prosecution, the fire shot injury was caused by the co-accused - Amaan. He submits that the eye-witness Durgesh, in his testimony, has not supported the case of the prosecution.

8. The learned Additional Public Prosecutor for the State submits that the eye-witness Durgesh had categorically stated in his statement under Section 164 of the Code of Criminal Procedure, 1973 (**CrPC**), that the victim was shot at the instance of the applicant.

9. I have gone through the Chargesheet and the Status Report.

10. 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; 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.

11. It is undisputed that the gun shot injury was allegedly



caused by the co-accused Amaan. The weapon of offence was also recovered allegedly at the instance of the co-accused Amaan.

12. Undisputedly, the eye-witness, in his deposition before the learned Trial Court, has not supported the case of the prosecution. While the probative value and the veracity of the evidence of the eye – witness would be considered at the time of final argument, it is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to bail. [Ref : ***Ram Govind Upadhyay v. Sudarshan Singh : (2002) 3 SCC 598***]

13. The investigation in the present case already stands concluded. The applicant was arrested on 14.02.2023 and has remained in custody since then. The Nominal Roll shows that the applicant has been involved in other cases as well. One FIR was filed in connection with an incident that occurred in 2021, and the applicant is on bail in that case. Another FIR No. 209/2023, was registered under Section 25 of the Arms Act, for which the applicant is also stated to be on bail.

14. It is also settled law that criminal antecedents of an accused cannot be a sole reason for refusal of bail.

15. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeer : AIR 2021 SC 712*** 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.

16. While it cannot be denied that the offence alleged against the applicant is heinous in nature, the Hon'ble Apex Court in the case of ***Javed Gulam Nabi Shaikh v. State of Maharashtra and***



Another: Crl.A.2787/2024 has observed as under:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

17. 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. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

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

19. The applicant is therefore, directed to be released on bail on him furnishing a personal bond for a sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- i. 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;
- ii. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;



- iii. The applicant shall appear before the learned Trial Court as and when directed;
- iv. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- v. 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.

20. 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.

21. 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.

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

AMIT MAHAJAN, J

OCTOBER 28, 2024

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