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

+ **BAIL APPLN. 3489/2024**

WASEEM

.....Petitioner

Through: Mr. Mohd. Suza Faisal, Advocate.

versus

STATE OF NCT DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State
with SI Anil PS Seemapuri, Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

25.10.2024

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1. By way of present bail application, the applicant/petitioner seeks regular bail in FIR No. 706/2017 registered under Sections 302/392/397/34 IPC & 25/27 Arms Act at Police Station Seemapuri, Delhi.
2. Learned counsel for the applicant submits that the applicant has been in custody since 07.09.2017 and the instant FIR came to be registered in the context of an incident dated 30.08.2017. It is stated that as per the case of the prosecution, three people came to the house of *Sharda Devi*, a neighbour of the deceased and indulged in an altercation. The deceased was sitting outside his house and upon hearing the altercation, tried to intervene, while one of the persons wearing the helmet fired in the air. The role ascribed to the present applicant is of accompanying the assailants and being the one without a helmet, he fired the shot that resulted in death of the deceased. He submits that while *Sharda* has been examined, she has neither supported the case of the prosecution nor identified the present applicant. The son of the deceased, namely *Sagar Bhawani* is examined as PW-2. Learned counsel



submits that no TIP was carried out and the applicant was already shown to the witnesses in the police station, a fact which was admitted at the time of his cross examination. While referring to the testimony of PW-2, he further submits that though the said witness in examination-in-chief had identified the present applicant as the one who was without helmet and had fired the shot, in his cross-examination, he stated otherwise inasmuch as it was stated that the person who was wearing the helmet had fired the fatal shot resulting in injury to his father. He submits that this contradiction is material and on this aspect, even any clarification has not been sought by the prosecution.

3. The bail application is opposed by learned APP for the State by contending that the applicant's identity is not in dispute as the witness *Sagar Bhawani* (PW-2) in his testimony has identified the applicant as the one who had fired the shot. He further submits that the effect of any variation could be seen only by the Trial Court and no benefit should accrue in favour of the applicant at this stage. It is stated that at the instance of the applicant, the weapon used in the offence was also seized and as per the ballistic report, the bullet recovered from the spot matched with the seized gun. The accused persons have also committed the offence of robbery and a sum of Rs.16,000/- kept in a bag was also stolen, which was identified by *Sharda* in her testimony. Lastly, it is stated that the applicant is also involved in many other cases under Sections 392/397 IPC as well as in offences under the Arms Act.

4. I have heard learned counsel for the parties and perused the record placed before me.

5. The applicant has been in custody for almost about 7 years. Out of the two eye witnesses of the incident, one i.e. *Sharda* has not supported the case



of the prosecution. The other eye witness has completely flipped on the aspect as to whether it was the person wearing the helmet who had fired the shot or the one without it. The other witness at two places in his cross-examination stated that the person who had fired the shot was wearing the helmet. Without commenting further on the merits on these contentions, which would be evaluated by the Trial Court on the conclusion of the Trial, however at this stage considering the period of custody of the applicant and considering that 23 witnesses are yet to be examined, this Court deems it apposite to direct that the applicant be released on regular bail subject to his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty J.M. and subject to the following further conditions :-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
 - ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
 - iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
 - iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
 - v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
6. The bail application is disposed of in the above terms.
7. Copy of the order be communicated to the concerned Jail



Superintendent electronically for information and necessary compliance.

8. Copy of the order be uploaded on the website forthwith.
9. Needless to state that this Court has not expressed any opinion on the merits of the case and have made the observations only with regard to present bail applicant and nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

OCTOBER 25, 2024/rd