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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3491/2024

AJAY RATHI

.....Applicant

Through: Mr. Vikas Arora,
Ms. Radhika Arora and
Mr. Sandeep Sharma,
Advts.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP
for the State with Insp.
Manjeet Singh, PS NFC
Delhi.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

07.11.2024

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1. The present application is filed seeking regular bail in FIR No. 259/2018 dated 01.10.2018, registered at Police Station New Friends Colony, for offences under Sections 302/34 of the Indian Penal Code, 1860 (**IPC**) and Section 27 of the Arms Act, 1959.
2. The FIR was registered pursuant to a PCR call made on 30.09.2018, noting that one person has been shot.
3. On enquiry, it was revealed that a person, namely, Rupesh was shot by two unidentified persons and had been taken to Holy Family Hospital.
4. During the course of treatment, the victim succumbed to his injuries. Two bullet wounds were found in the chest of the deceased. It was revealed that the deceased was playing along with children in the street when two men suddenly came running

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from Taimur Nagar slums and one of them shot the deceased in his chest. The accused persons were later identified and traced.

5. It is alleged that the applicant was arrested in another case and he disclosed to be involved in the present FIR. The applicant was thereafter, taken into custody on 11.10.2018 in the present case and allegedly confessed to the crime.

6. The co-accused 'Akash' was thereafter arrested on the disclosure of the applicant.

7. Another co-accused namely 'Akash Tyagi' was also arrested on 16.11.2018.

8. The statements of eye-witnesses were recorded. It was alleged in the statements that two boys came running and were having guns in their hands and when the deceased tried to stop the accused persons, the applicant was running ahead and the other accused person namely 'Akash' shot at the deceased. Both the accused thereafter ran away.

9. The learned counsel for the applicant submits that even if the case of the prosecution is taken at the highest, no gun shot injury was caused by the applicant.

10. He submits that the applicant is in custody since 11.10.2018 and has suffered almost six years of incarceration. He submits that the applicant has been released on interim bail on four occasions and has not misused the liberty.

11. He submits that the prime witnesses have already been examined and there cannot be any chance of threatening the witnesses at this stage.

12. He submits that the trial also is not likely to conclude in near future since only 14 out of 46 witnesses have been examined.



13. The learned Additional Public Prosecutor for the State submits that the applicant is the one who instigated the other co-accused person to cause gun shot injury.

14. He further submits that the applicant, on earlier occasions, was involved in multiple cases for serious offences and the antecedents do not entitle him for any relief.

15. 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.

16. Insofar as the allegations regarding the applicant's involvement in the alleged conspiracy to commit the offence is concerned, the same would be tested during the course of trial, and cannot be a ground to deny bail to the applicant at this stage. It also cannot be denied that the applicant is not the one who caused gun shot injury to the victim.

17. It is trite that long period of incarceration is an important factor to be kept in mind while considering the application for bail. The applicant was arrested on 11.10.2018 and has suffered almost six years of incarceration. The trial is also not likely to conclude in the near future.

18. 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.

19. It is also settled law that criminal antecedents of an accused cannot be one of the sole reason for refusal of bail [*Prabhakar Tewari v. State of U.P. : (2020) 11 SCC 648*].

20. 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.

21. 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.

22. Appropriate conditions can be put to allay any apprehension of the applicant committing another offence of a similar nature while on bail.

23. The applicant is, therefore, directed to be released on bail (if not in custody in any other case) on furnishing a personal bond for a sum of ₹25,000/- 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 the country without the permission of the learned Trial Court;



- c. The applicant shall appear before the learned Trial Court as and when directed;
 - d. 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;
 - e. 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.
24. 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.
25. 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.
26. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

NOVEMBER 7, 2024

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