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

+ **BAIL APPLN. 3553/2024**

VIKASH KHARI

..... Applicant

Through: Mr. Alok Vajpayee, Adv.

versus

STATE GOVT OF NCT OF DELHIRespondent

Through: Mr. Manoj Pant, APP for
the State

SI Saurav Sharma, PS-
Subzi Mandi

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **12.11.2024**

1. The present application is filed seeking regular bail in FIR No. 617/2021 dated 07.11.2021 registered at Police Station Subzi Mandi for offences under Sections 307/34 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959.

2. It is alleged that the applicant along with the co-accused had hurt the victim with the intention to kill. A gunshot injury was caused to the victim.

3. The learned counsel for the applicant submits that the injury to the victim was caused on lower part of his leg. He submits that the applicant could not have been made accused for offence under Section 307 of the IPC. He submits that the applicant had no intention to kill and even if the case of the prosecution is taken at the highest, the offence is of grievous hurt.

4. He submits that that there was a quarrel between the parties which also led to registration of cross FIRs and even if the case of the prosecution is taken at the highest, the incident happened on spur of the moment.



5. He submits that the applicant is in custody since 22.12.2021 and the charges are yet to be framed. He submits that the trial is not likely to conclude in near future.

6. The applicant is stated to be involved in other cases on earlier occasion in FIR No. 467/2024 under Sections 302/34 of the IPC. It is pointed out that the applicant has already been acquitted in the said case.

7. 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.

8. Admittedly, the gunshot injury to the victim was caused on the lower part of the leg. In such circumstances, whether the applicant had any intention to kill the victim would be seen during the course of the trial. The charges have not been framed as yet.

9. It is pointed out that the prosecution is awaiting a ballistic report and is taking adjournments. It is not known as to when the report would be prepared and the learned Trial Court will hear the arguments on charge. The trial, in such circumstances, will take considerable period of time. Substantial period of time has been spent by the applicant in custody.

10. 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.

11. 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.

12. In view of the above, the applicant is directed to be released on bail 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:

- b. 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;
- c. The applicant shall under no circumstance leave the boundaries of the country without the permission of the learned Trial Court;
- d. The applicant shall appear before the learned Trial Court as and when directed;
- e. 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;
- f. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phones switched on at all times.

11. 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.

12. It is clarified that the observations made in the present order are only for the purpose of deciding the present bail application and shall not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

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

AMIT MAHAJAN, J

NOVEMBER 12, 2024

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