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

+ **BAIL APPLN. 4291/2024**

SUNIL PUNIYA

.....Petitioner

Through: Mr. Hirein Sharma, Mr. Vimal Tyagi,
Mr. Vikas Singh and Mr. Balaji
Pathak, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastva, APP for the
State with Insp. Sandeep, P.S.
Ranhola.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

23.12.2024

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By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks regular bail in case FIR No.499/2018 dated 28.07.2018 registered under sections 302/34 of the Indian Penal Code, 1860 and sections 25/27 of the Arms Act, 1959 at P.S.: Ranhola, Delhi.

2. Notice on this petition was issued on 25.11.2024.
3. Status Report dated 09.12.2024 has been filed in the matter.
4. Nominal Roll dated 10.12.2024 has also been received from the Jail Superintendent.
5. Mr. Hirein Sharma, learned counsel appearing for the petitioner points-out that *vide* order dated 04.09.2024 made in BAIL APPLN. No. 690/2023, this Bench has granted to co-accused Sahil @ Pradeep



Tomar regular bail in the same FIR, essentially on 02 considerations : *first*, that the petitioner in that case has been implicated based on the statement of the present petitioner's father, who has said in his statement recorded under section 161 of the Code of Criminal Procedure 1973, that 02 of the 04 boys spotted by him in a certain CCTV footage *appear to resemble* his son, *i.e.* the petitioner, and Sahil @ Pradeep Tomar; and *second*, that the complainant, who claims to be the eye-witness to the incident, has turned hostile in his deposition before the learned trial court and has failed to identify the petitioner in that case.

6. Mr. Sharma submits, that to be sure, even the petitioner's father has only said that 02 of the 04 boys spotted in the CCTV footage, *seemed to resemble* his son, *i.e.* the present petitioner and Sahil @ Pradeep Tomar; but the father has not confirmedly identified any person in the CCTV footage. Counsel also points-out, that it is important to note, that the petitioner's father has *not been arrayed* by the prosecution as a witness in the chargesheet; and therefore, his statement recorded under section 161 Cr.P.C. would not advance the prosecution case at the trial.
7. That apart, Mr. Sharma argues, that the brother of the deceased *viz.* Devender Goyal (PW-3) as well as the wife of the deceased Pinky Goel (PW-4) have both turned hostile in their deposition before the learned trial court and have failed to identify the present petitioner.
8. Mr. Sharma submits, that it is accordingly clear that the petitioner has not been identified as being present at the spot *by any of the prosecution witnesses*; and yet, the petitioner has been in judicial



custody since the date of his arrest *i.e.* 26.11.2018, without ever having availed any interim bail or other similar relief.

9. It is prayed that especially since the petitioner has now been in custody for about the last 06 years as an undertrial, he deserves to be enlarged on regular bail.
10. On the other hand, opposing the grant of bail, Mr. Tarang Srivastva, learned APP appearing for the State argues, that though it is correct that PW-3 and PW-4, the brother and wife of the deceased respectively, have both turned hostile, however, it be also noted that the petitioner has 04 other criminal implications, of which he is on bail in three of the cases and is lodged in Sonapat Jail in the fourth matter.
11. Learned counsel for the petitioner counters this submission by pointing-out, that regardless of the other criminal involvements cited against him, the current position is that *all public witnesses have turned hostile* and there is therefore no possibility that the petitioner would be convicted in the case, since no witness has identified him as having been present at the spot.
12. The complainant/brother of the deceased is also present in court. He submits that he had engaged a private counsel, who had said that he would join today's proceedings *via* video-conferencing. However no one is present on his behalf.
13. The court has asked the complainant to make his submissions. He says that it is correct that he "*does not recognise*" the petitioner; and confirms that he has made the same statement during his deposition before the learned trial court.



14. A perusal of the nominal roll shows that the petitioner has 04 other criminal involvements; and though his overall jail conduct has been ‘un-satisfactory’, his jail conduct for the last one year has been recorded as ‘satisfactory’.
15. In the above view of the matter, and especially considering the fact that the petitioner has already undergone about 06 years of judicial custody as an undertrial in a case where all public witnesses are stated to have been turned hostile, this court is persuaded to grant to the petitioner – **Sunil Puniya s/o Dilbagh** – *regular bail* pending trial, subject to the following conditions :
 - 15.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 02 local sureties in the like amount from family members, to the satisfaction of the learned trial court;
 - 15.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
 - 15.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
 - 15.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise



indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and

15.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer in writing.

16. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of bail.
17. Subject to the above, the petitioner is directed to be released from judicial custody *forthwith*, unless required in any other case.
18. The petition stands disposed-of in the above terms.
19. Other pending applications, if any, are also disposed-of.
20. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
21. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 23, 2024

V. Rawat