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

+ **BAIL APPLN. 1773/2024**

DEEPAK

.....Petitioner

Through: Ms. Dolly Sharma, Advocate.
versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
Insp. Arvind Kumar, P.S. Mahendra
Park.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

19.02.2025

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1. This hearing has been done through hybrid mode.
2. The present application under Section 439 read with Section 482 of the Cr.P.C. (Section 483 read with Section 528 of the BNSS) seeks regular bail in case FIR No. 292/2018, under Sections 302/120B/420/468/471/34 of the IPC and Sections 25/27/54/59 of the Arms Act, registered at P.S. Mahendra Park.
3. The case of the prosecution as per status report dated 22.07.2024, authored by Insp. Lokesh Sharma, SHO, P.S. Mahendra Park, is as under:

“1. Most respectfully Showeth, brief facts of the case are that that on 16.7.2018, the above case was registered on the statement of Sh. Dinesh Jain about the incident that on 16.7.2018 at about 8 PM, when the complainant and his friends Vineet and Rajesh Gupta age-44 yrs, were coming out of their factory at SSI 53, Rajasthan Udyog Nagar, Near Jahangir Puri, Delhi then three men riding on a scooty came there, one of them get off the scooty and opened a gunshot fire on Rajesh Gupta, who was keeping his brief case inside the boot of his car and they flee away on the same scooty towards GT Road. The bullet hit in the abdomen of Rajesh Gupta, a PCR call



was made by the complainant and he was taken to Fortis hospital Shalimar Bagh, where he had expired during treatment within an hour of the incident.

During investigation, one empty cartridge was recovered from the spot and blood exhibits were picked. The CCTV cameras of the office of the complainant were checked, which revealed that the two suspects (later on identified as Paras Jain and Shivam (@ Pandit) did raccee on the same scooty at about 7 PM. One Santro car Reg. No. DL-4CR-3182 (Reg. No. identified subsequently) having other associates seated in it was positioned at some distance from the crime scene. Both scooterist and car riders were in constant touch through the two new mobile phones. and SIM cards purchased exclusively to commit the robbery. Investigations revealed that accused persons (1) Paras Jain (2) Narender Sharma (3) Ravi Kumar (4) Shivam @ Pandit, (5) Neeraj Kumar, (6) **Deepak Saini @ Sacha (applicant herein) s/o Suraj Bhan r/o Vill: Naya Gaon, PS: Sadar Bahadurgarh, Distts Jhajjar, Haryana** and (7) Ankit @ Sukha had made a planning to demand/ extort Rs. 50 Lac from the deceased Rajesh Gupta and his associates and in case of denial on the part of them, they have planned to kill.

Based on the leads after identifying the Santro car and human Intelligence, co-accused Neeraj Kumar resident of Nihal Vihar, Delhi was arrested on 27.07.2018. He disclosed to have hatch the conspiracy for the first time with his school friend petitioner/ accused Ravi Kumar.

On 30.07.2018 accused Ravi Kumar was arrested. He disclosed to have worked as driver with the complainant Dinesh Jain's father about 8-9 years prior to the incident. As disclosed by the accused Neeraj Kumar and Ravi Kumar, about two weeks prior to the incident both of them had hatched conspiracy to rob and extort money from the complainant(s).

Other associates including the present applicant Deepak @ Sacha were joined by co-accused Neeraj Kumar. Few days later (2-3 days) Neeraj Kunar arranged meeting with other associates co-accused persons Paras Jain and Narender Sharma at Nihal Vihar, Delhi. Later in the evening accused Ravi Kumar pointed out the factory at SSI Industrial Area Jahangirpuri, Delhi to them and even followed complainant and his partner up to Paschim Vihar, Delhi and got their houses identified to his associates.



As per CDR record of the accused pertaining to his mobile phone number 7082846806, he was in regular touch with co-accused Neeraj Kumar having phone no. 7838281611 & 9540790994. He was present in the Santro car with other associates near the scene of crime.

It is also revealed that on the day of incident i.e. 16.07.2018 the accused persons had switched off their personal phones and used two new mobile phones & SIMs purchased solely for the purpose of commission of crime. Those SIMs were found to be purchased on the ID of other customers in connivance of the shopkeeper Md. Riyaz who is also arrested and charge sheeted in the present case. Sections 420/468/471 IPC were also added in the case.

The post mortem examination report No. 524/18 had confirmed firearm entry wound and cause of death is specified as, *"...hemorrhagic shock due to injuries to mesenteric vessels and the intestinal loops produced by firearm projectile. The injury is ante-mortem in nature and is sufficient to cause death in ordinary course of nature."*

The DVR from the crime scene was seized and sent to FSL for examination; FSL report has authenticated the genuineness of DVR. Two firearms, Santro car and two mobile phones were also recovered in this case.

The present applicant Deepak @ Sacha was declared P.O. and was arrested subsequently. The main supplementary charge-sheet mentioning 40 PWs against six accused persons except Deepak and Ankit (who were declared P.O.) was filed in the case. Charges were framed against all accused persons on 24.10.2019. Subsequently, supplementary chargesheet against Deepak and Ankit along with FSL reports have also been filed in this case. Now, the case is pending trial before this court and is listed for 06.01.2024 for prosecution evidence. The complainant Sh. Dinesh Jain is partly examined in chief. His further examination in chief was deferred for the purpose of playing of CCTV footage. Now, he and other police witnesses are summoned for next date. Only two witnesses: SI Manrakhan, Rajnish Dhingra (reg. owner of Santro car) out of total 54 PWs are examined in full so far in the case.

It is pertinent to mention that co-accused Ankit @ Sukha who and applicant accused Deepak @ Sacha belongs to same village. Both were declared P.O. in the case. Ankit @ Sukha has jumped the bail. The applicant accused Deepak @ Sacha is having total two criminal involvements:



Sr. No.	PS	FIR No.	Under Sections
1.	Mahendra Park	292/18	302/120B/420/468/471/394/174A/34 IPC & 25/27/54/59 Arms Act
2.	City Bahadurgarh	360/20	25/54/59 Arms Act

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4. Learned counsel for the applicant submits that the case of the prosecution *qua* the present applicant is with regard to conspiracy and further that he was present near the spot of the incident in a Santro Car alongwith other co-accused persons. It is submitted that the main public witnesses in the present case, i.e., PW-3/Dinesh Jain, PW-5/Vineet Gupta and PW-6/Sagar have already been examined and they have not identified the present applicant. It is further submitted that similarly placed co-accused namely Ravi Kumar, has already been granted bail by a coordinate Bench of this Court in BAIL APPLN. 3259/2023 dated 28.03.2024. The applicant has been in judicial custody since 04.08.2020. It is submitted that the present applicant was granted interim bail on 02.03.2024 and he had duly surrendered without misusing the liberty granted to him. It is further submitted that the prosecution has cited 54 witnesses and only 7 witnesses have been examined so far and the trial is not likely to complete in near future.

5. *Per contra*, learned APP for the State, on instructions from the Investigating Officer, submits that case of the prosecution *qua* the present applicant is of conspiracy and that he was present along with other co-accused



persons in a Santro Car, which has been identified in the CCTV footage. On a pointed query, on instructions from the Investigating Officer, learned APP submits that that present applicant has not been identified sitting in the said Santro car. It is further pointed out that the applicant was declared as a proclaimed offender and was arrested subsequently. As per the status report, it is pointed out that one more case, i.e., FIR No. 360/2020 under Sections 25/54/59 of the Arms Act registered at PS City Bahadurgarh, Haryana is pending against him. Further, the nominal roll mentions another FIR being registered at PS: City Bahadurgarh besides the aforementioned one in the Status Report, i.e., FIR No. 463/2017 under Sections 25/54/59 of the Arms Act. He is stated to be on bail in both the cases.

6. Heard learned counsel for the parties and perused the records.

7. Admittedly, the case of the prosecution *qua* the present applicant is of conspiracy alongwith other co-accused persons. The presence of the applicant in the Santro car on the date of the incident is primarily based on the disclosure statements of the co-accused persons as well as himself. At this stage, there is no direct evidence to show the presence of the applicant in the Santro car which is seen in the CCTV footage. Further, the said Santro car does not belong to the present applicant.

8. The co-ordinate Bench while granting bail to co-accused Ravi Kumar, had observed as under:

“20. As is evident from the case of the prosecution, it is based on the alleged disclosure statement of the co-accused-Neeraj Kumar and the alleged confessional statement of the applicant herein. I need not say any further in regard to its relevance at this stage. Similar observation needs to be made with respect to the CDRs.

21. Only 4 out of 54 witnesses have been examined. The applicant



has already been in custody for a period of more than 4 years, having been arrested on 30.07.2018. There is no allegation of him having misused the indulgence of being released on interim bail under HPC guidelines during the period of Covid-19. The applicant is also not reported to have any criminal antecedents.

22. It is the own case of the prosecution that the applicant was not present at the site of the incident. If that be so, him influencing the eyewitnesses is not material.”

9. In the present case, none of the alleged eye witnesses have named the present applicant, whose statements have been recorded so far. It is noted that out of 54 witnesses cited by the prosecution, only 7 witnesses have been examined so far and the trial is likely to take some time. As per nominal roll dated 22.07.2024 authored by Superintendent, Central Jail No. 3, Tihar New Delhi, the applicant has been in custody since 04.08.2020 and as on 19.07.2024, he has been in judicial custody for a period of 3 years 11 months and 12 days, which makes for a custody period of approximately 4 years and 5 months as of now.

10. In totality of the facts and circumstances of the case, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the learned Trial Court as and when



the matter is taken up for hearing.

- iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
- 11. The application is allowed and disposed of accordingly.
- 12. Pending application(s), if any, also stand disposed of.
- 13. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.
- 14. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
- 15. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

FEBRUARY 19, 2025/bsr/Pc

Click here to check corrigendum, if any