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

+ CRL.M.C. 2433/2021

STATE

.....Petitioner

Through: Ms. Meenakshi Dahiya, APP for the
State with Inspector Mukesh Kumar,
PS Barakhamba Road.

versus

SUHAIL

.....Respondent

Through: Mr. Sanjeev Kr. Baliyan, Mr. Nirbhay
Sharma, Mr. Yash Yadav and Ms.
Himanshi, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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09.01.2025

1. The Petition under *Section 439 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC')* read with *Section 482 of CrPC*, has been filed on behalf of the State/Petitioner, for cancellation of Bail granted to the Respondent, Suhail *vide* Order dated 08.04.2021 in FIR No. 48/2019 under *Section 302/201/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC')* and under *Section 25/27 of the Arms Act*, registered at Police Station Barakhamba Road, New Delhi.

2. The State is aggrieved by the grant of Bail to the Respondent, Suhail *vide* Order dated 08.04.2021 as the Bail has been granted on the ground of parity with the co-accused, Mohd. Sharif and Mohd. Amir. It is submitted that the role of the Respondent, was not similar to the other co-accused. In fact, it is on record that it had emerged in the investigations that it is Suhail, who had shot the deceased and the weapon of offence has also been recovered at his instance. Moreover, DNA Profile of the blood on the



clothes of Respondent has matched with the blood of the deceased thereby further confirming his involvement in the crime. Furthermore, it has emerged that there was previous enmity between the deceased and the present Respondent. In the light of the role and the circumstances surrounding the Respondent, it could not have been said that there was parity of his role with the other co-accused and could not have been considered as a ground for grant of Bail.

3. *Learned counsel on behalf of the Respondent*, submits that the bullet which has been recovered from the body of the deceased, has not matched with the alleged weapon of offence recovered at the instance of the Respondent. Moreover, the Bail has been granted in the facts of the case and there is no ground for cancellation of Bail.

4. **Submissions heard.**

5. The case of the Prosecution is that the deceased Salman along with the Respondent, Suhail and two other co-accused, Mohd. Sharif and Mohd. Amir, were travelling in a 'Creta' vehicle and were trying to shoot a "Tik Tok film". In the process, Suhail with the intent of making the film, took out the pistol, which accidentally got fired and resulting in the demise of Salman.

6. Soon thereafter, Suhail and Mohd. Amir along with the deceased took the Car to Hazi Imran, who corroborated that he found the deceased in the vehicle in which Suhail and Mohd. Amir were present. Moreover, the two accused confessed to him about having shot the deceased.

7. The DNA Profiling of the blood on the clothes of the Respondent was done with that of the deceased and the blood group matched. It had also emerged during the investigations subsequently, that there was a previous



enmity of the Respondent with the deceased though, initially the evidence was that they all were friends and travelling together in the 'Creta' Car and shooting a Tik Tok film.

8. In the impugned Bail Order, these factors were considered and it was also observed that the other two co-accused were travelling in the Car along with the Respondent, Suhail and the deceased and that the Charges against them had been framed under Section 302/34 of IPC thereby implying that there allegations against them were similar.

9. Though, there may be different roles assigned but essentially, the case of the Prosecution was that the firing was actually done by Suhail but at the same time, there is Section 34 of IPC invoked against all the three co-accused persons.

10. The learned ASJ had considered the totality of circumstances while granting the Bail to the Respondent *vide* Order dated 08.04.2021. The incident was of 13.03.2019 and the Respondent had been arrested on 19.03.2019. The Charges were framed on 23.02.2021 and thereafter, the Bail was granted on 08.04.2021. Since the date of framing of Charge, out of 25 prosecution witnesses, 5-6 witnesses have been examined on behalf of the Prosecution. There is no averment and allegation that since the date of Bail, the Respondent has misconducted himself. It cannot be said that the sole ground of Bail to the Respondent, was parity but the facts of the case were also considered.

11. There is no ground for cancellation of Bail. The Petition is hereby dismissed and disposed of accordingly.

NEENA BANSAL KRISHNA, J

JANUARY 9, 2025/RS