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

+ **BAIL APPLN. 2698/2024**

GUFRAN @ TOPYA

.....Petitioner

Through: Mr. Vineet Jain, Advocate

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for the State
with Inspector Chetan Singh, P.S.
Khyala.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

09.01.2025

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1. The present bail application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter 'BNSS') has been filed on behalf of the applicant, seeking grant of regular bail in case arising out of FIR bearing no. 67/2018, registered at Police Station Khyala, Delhi, for offences punishable under Sections 302/34 of the Indian Penal Code, 1860 (hereafter 'IPC').

2. As per the Status Report, the present FIR was registered on 09.04.2018, based on the statement of Mr. Aman Khan, who had reported that on the same day, around 12:30 PM, his brother Bablu had left their house under the pretense of purchasing some goods. Later that evening, at about 5:30 PM, while Aman was heading towards Guru Gobind Singh Hospital (hereafter 'GGS Hospital') to check on a neighbor's health, he had



noticed his TVS Scooty parked nearby. Shortly thereafter, Aman had seen his brother Bablu standing nearby, who had been held by the present accused Gufran @Topya, a resident of their colony. Co-accused Imran Khan @ Takkar had then pointed a firearm at Bablu's chest and fired the same, due to which Bablu had collapsed. The complainant Aman had then screamed for help, at which point both the accused fled the spot. Bablu was rushed to GGS Hospital, where he was declared brought dead.

3. During investigation, co-accused Imran Khan @ Takkar was arrested on 18.04.2018, and the weapon used in the crime, a *desi katta*, was recovered at his instance. Consequently, Sections 25/54/59 of the Arms Act were added to the case. The present accused, Gufran Khan @ Topya @ Rehan, was arrested on 24.04.2018. A chargesheet was filed against both the accused persons, and the learned Trial Court subsequently framed charges against them.

4. The learned counsel for the present accused/applicant argues that the applicant has been falsely implicated in this case, solely on the vague and fabricated statement of the victim's brother. It is further argued that the applicant has been incarcerated for six and a half years, and apart from the inconsistent statements of the complainant, there is no other incriminating evidence linking the applicant to the alleged crime. It is emphasized that, aside from PW-1, Aman Khan, the victim's brother, no other witnesses have observed the alleged incident. The learned also highlights that all public and material witnesses have been examined before the learned Trial Court, and no incriminating evidence has emerged against the applicant. Therefore, it is prayed that the applicant be granted regular bail.

5. The learned APP for State, on the other hand, argues that the



allegations against the applicant are grave and serious, and the applicant was actively involved in the heinous offence of committing the murder of the victim. It is contended that the eye witness's testimony further implicates the applicant inasmuch as PW-1 had identified the applicant during the examination before the learned Trial Court. He further states that the conduct of the applicant, as mentioned in his nominal roll, is highly unsatisfactory. Therefore, in view of these facts and circumstances, it is submitted that the applicant is not entitled to grant of bail.

6. Conversely, the learned APP for the State argues that the allegations against the applicant are grave and serious, and that the applicant was actively involved in the commission of murder of the victim. It is contended that the testimony of the eyewitness, PW-1 clearly implicates the applicant, as PW-1 has identified the applicant during the examination before the learned Trial Court. Furthermore, the learned APP points out that the applicant's conduct, as reflected in his nominal roll, is highly unsatisfactory. Therefore, considering these facts and circumstances, it is submitted that the applicant is not entitled to bail.

7. This Court has heard arguments addressed on behalf of both the parties and has perused the material available on record.

8. The Hon'ble Supreme Court in catena of judgments, has consistently emphasized 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 of evidence.



9. The instant case involves offence punishable under Section 302 of IPC. In this regard, a quick reference can be made to the decision of Hon'ble Supreme Court in *Vijay Kumar v. Narendra & Ors.*: (2002) 9 SCC 364, wherein it has been held as under:

"10. ...The principle is well settled that in considering the prayer for bail in a case involving serious offences like murder, punishable under Section 302 IPC, the court should consider the relevant factors like the nature of the accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after the have been convicted for committing the serious offence of murder...".

10. In the present case, the prosecution alleges that the applicant was involved in restraining the victim while the co-accused had fired a gunshot at the victim's chest, which had caused the death of deceased. The testimonies of the prosecution witnesses corroborate this sequence of events. Notably, PW-1 has specifically identified the applicant before the learned Trial Court and testified that during a quarrel, the applicant had caught hold of the victim's left arm and the co-accused had shot at him.

11. Additionally, the applicant's conduct in jail, as reflected in the nominal roll, has been highly unsatisfactory, and ten punishments have been awarded to him between the period 2019 and 2024. The Court's attention was also drawn to the fact that when co-accused Imran Khan was released on interim bail, he had failed to surrender upon its expiry, which had necessitated the issuance of Non-Bailable Warrants (NBWs) and proceedings under Section 82 of Cr.P.C. against him.

12. The trial is currently at the stage of prosecution evidence. Considering the gravity of the offence, the applicant's role, and the material collected during the investigation, this Court finds no grounds to grant regular bail to



the applicant at this stage.

13. Accordingly, the present bail application stands dismissed and accordingly disposed of.

14. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

15. The order be uploaded on the website forthwith.

JANUARY 9, 2025/at

SWARANA KANTA SHARMA, J

Click here to check corrigendum, if any