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

+ **BAIL APPLN. 3138/2024**

ABHISHEK BHARTI

.....Petitioner

Through: Ms. Anu Narula, Advocate.
versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Hemant Mehla, APP for the State.
SI Abhay Singh, P.S. Moti Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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05.03.2025

1. This hearing has been done through hybrid mode.
2. The present application under Section 483 read with Section 528 of the BNSS seeks regular bail in case FIR No. 545/2023, under Sections 307/34 of the IPC and Sections 25/27 of the Arms Act, registered at P.S. Moti Nagar.
3. The case of the prosecution as per status report 02.09.2024, authored by Insp. Varun Dalal, SHO, P.S. Moti Nagar is as under:

“1. Briefly stated facts of the case are that 16.09.2023 a PCR Call vide DD No. 49-A dated was received at PS Moti Nagar which was entrusted to SI Abhay Singh who along with HC Sunil No. 885/W reached the spot Acharya Bhikshu Hospital, Moti Nagar, Delhi and found the injured Sher Ali S/o Md Sabbir Rio 2001, G Block, Baba faridpuri, Anand Parbat, Delhi Age-30 years was already been taken to Acharya Bhikshu Govt. Hospital by PCR Van and got admitted them vide MLC No. 2774/23. The 10 obtained MLCs of Injured person. Which it revealed the injured had sustained bullet injuries.

2. Where the friend of injured namely Sarfaraz S/o Md Sehban met who stated that he along with injured Sher Ali S/o MdSabbir was working at furniture market kirti nagar, Delhi and after finishing their work of stitching of Sofa they were heading towards their



home on a scooty when the injured Sher Ali asked him to stop the scooty as he wanted to pee on the road side. While he was peeing on the road side suddenly a tempo in high speed stopped near Sher Ali which caused panic in Sher Ali and he said the driver of the tempo to drive safely on which the driver started arguing with Sher Ali and this arguments burst into fight.

3. The tempo driver Vinod Sio Jai Kishan Rio Jhuggi No. B-97/3, Sonia Gandh Camp Naraina Industerial Area, Delhi Age-25 years along with two other persons namely Abhishek Bharti Sio Pappu Bharti Rio Jhuggi No. B-97/3, Sonia Gandhi Camp, Naraina Industerial Area Delhi Age-21 years and Parduman Sio Kedamath R/o Jhuggi No. W-330, B-97/3. Sonia Gandhi Camp, Naraina Industerial Area, Delhi were fighting with Sher Ali and Sarfaraz when Sarfaraz started his scooty and while going one person namely Abhishek Bharti S/o Pappy Bharti took out a pistol and fired with the intention to kill which hit the upper hip part of Sher Ali that made him fell down on the road. After firing the accused persons fled the spot.

4. Sarfaraz took Sher Ali to Acharya Bhikshu Hospital, Moti Nagar Delhi and information regarding the injured persons reached at the Police station Moti Nagar Delhi and 10 reached the Hospital and recorded the statement of injured.

5. On secret information a raiding party was constituted and accused Vinod Yadav and Abhishek Bharti were arrested and third accused was also arrested on the instance of Accused Vinod Yadav and Abhishek Bharti. And the pistol was recovered from the possession of Abhishek who later disclosed having fired on Sher Ali and the Tempo No. DL-ILAD-4864 TATA ACE was recovered from Vinod Yadav. Initially the third accused Parduman was found to be minor in age but after verifying his age from the school he was considered as major.

6. TIP of all accused persons was conducted and the injured Sher Ali identified all accused persons and the chargesheet of the case was submitted before the Hon'ble court.

7. Accused Vinod Yadav and Parduman later released on bail by the Hon'ble Court.”

4. Learned counsel appearing on behalf of the applicant at the very outset submits that the statement of the injured witness, i.e., Mohd. Sher Ali (PW-7) has been recorded before the learned Trial Court and he has not identified the



present applicant as the person responsible for the gunshot injury received by him. The statement of the aforesaid witness has been handed up in Court today and the same is taken on record. It is further submitted that two other co-accused persons, namely, Vinod Yadav and Praduman have also been granted bail by the learned Trial Court. It is pointed out that the applicant is not involved in any previous offence and the trial is not likely to conclude in the near future.

5. *Per contra*, learned APP for the State submits that the complainant in the present case, namely, Sarfaraz who is the author of the present FIR is yet to be examined before the learned Trial Court. It is also stated that the pistol has been recovered at the instance of the present applicant. It is further submitted that offence is serious in nature and therefore the bail may not be granted to the present.

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

7. Admittedly, Mohd. Sher Ali (PW-7), injured witness has not identified the present applicant as the perpetrator of the crime. He had been cross-examined by learned APP, however, he maintained his stand with regard to non-identification of the present applicant. The prosecution has cited 19 witnesses and only 7 witnesses have been examined so far. The applicant is not involved in any previous offence. As per nominal roll dated 26.02.2025, as on 25.02.2025, the applicant has undergone incarceration of 1 year 4 months and 25 days.

8. In totality of the facts and circumstances of the case, 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.
9. The application is allowed and disposed of accordingly.
10. Pending application, if any, also stand disposed of.
11. 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.
12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
13. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MARCH 5, 2025/bsr/pr

Click here to check corrigendum, if any