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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3274/2024**
SHIVAM @ PANDITPetitioner

Through: Mr. Gajraj Singh and Ms. Sakshi
Sachdeva, Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI)Respondent
Through: Ms. Shubhi Gupta, APP for the State.
Insp. Arvind Kumar, PS Mahendra
Park.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

ORDER
18.03.2025

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1. This hearing has been done through hybrid mode.
2. The present application under Section 483 of the BNSS (Section 439 of the Cr.P.C.) 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 the status report dated 21.11.2024 authored by Insp. Lokesh Sharma, SHO PS Mahendra Park is as under:-

“Most respectfully showeth, that on 16.7.2018, the above case was registered on the statement of Sh. Deepak Jain. The brief facts of the case are that on 16.7.2018, when the complainant and his friends were leaving their factory at SSI 53, Rajasthani Udyog Nagar, Delhi, at about 8 PM, three scooterists came on a scooty and one of them fired on Rajesh Gupta who was keeping his bag in the Diggy of his car. The bullet hit the abdomen of Rajesh Gupta and he was taken to Fortis hospital Shalimar Bagh where he was declared dead during treatment within a period of an hour.

During investigation, the CCTV cameras installed at the office of complainant were checked, where it was revealed that two suspects (later on identified as paras Jain and Shivam Pandit) did a

BAIL APPLN. 3274/2024

Page 1 of 6



raccee on the same scooty at about 7 PM on the date of incident. Accused Neeraj Kumar along with his other six associates namely Narender Sharma, Ravi Kumar, Shivam @ Pandit, Paras Jain, Deepak Saini and Ankit @ Sukha had made a planning to demand/extort money for Rs. 50 Lac from the deceased Rajesh Gupta or his associates and on denial committed the murder. All the eight accused persons have been arrested in this case. The weapon of offence (country made pistol) and two mobile phones with fake IDs were recovered from the house of co-accused Paras Jain on his instance. One Santro car of co-accused Paras Jain was also seized which was used during the commission of crime.

Accused Narender Sharma who was riding the scooty while another accused persons Ankit @ Sukha as well as Shivam @ Pandit were pillion rider on the scooty. Ankit @ Sukha had fired on deceased Rajesh Ciupta and they fled from the spot.

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. Accused Deepak @ Sacha was declared P.O. and was arrested subsequently. The main charge-sheet mentioning 40 PWs against six accused persons except Deepak and Ankit (who were declared P.O.) was filed in the present 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 the trial court and is listed for 26/11/2024 for prosecution evidence.

Only six witnesses: SI Manrakhan, Rajnish Dhingra (reg. ownership of Santro car), Vinit Gupta, Sagar, out of total 54 PWs has been examined so far in the case. NDOH hearing is 26/11/2024. **Accused Shivam@ Pandit was arrested in the present case on 28.7.2018. After his arrest he refused to participate in TIP proceedings.”**

4. Learned counsel appearing on behalf of the applicant submits that the latter has been in judicial custody since 23.01.2018 and out of the 54 witnesses cited by the prosecution, only 7 witnesses have been examined so far. It is



submitted that the applicant was released on HPC guidelines and without violating the conditions, he had surrendered in time before the concerned authorities. It is the case of the applicant that the main accused Ravi Kumar, who has been assigned the main role of conspirator has been granted bail by a Coordinate Bench of this Court in BAIL APPLN. 3259/2023 *vide* order dated 28.03.2024. Similarly, it is submitted that co-accused Neeraj and Deepak have also been admitted to bail by this Court in BAIL APPLN. 2706/2024 and BAIL APPLN. 1773/2024 respectively, *vide* orders dated 19.02.2025. It is submitted that it is not the case of the prosecution that the applicant had opened fire on the deceased.

5. It is pointed out that the eye-witness- PW-3 (Dinesh Jain), i.e., the complainant has turned hostile as he has not supported the case of the prosecution. It is submitted that CCTV footage was played during the course of testimony of the said eye-witness wherein nothing was visible. The other eye-witness PW-5 (Vineet Gupta) had been examined and he also failed to identify the applicant.

6. It is pointed out that one witness PW-6 (Sagar), who was the driver of PW-5 (Vineet Gupta) was examined before the learned Trial Court and has identified the present applicant to be the person present at the spot alongwith one co-accused Narender Sharma on the scooty on the date of the incident. It is submitted that during his further examination and cross-examination certain vital discrepancies in his statement have come on record. It is stated that the said witness-PW-6, in his cross-examination by the learned APP had stated that he had visited the police station after a period of one and a half month of the incident when he had seen the present applicant at the police station. He has also come on record to say that the police had not shown him any CCTV

BAIL APPLN. 3274/2024

Page 3 of 6



footage and he had seen the same for the first time in the Court, however, he also stated that the persons can't be seen in the CCTV footage. It is further stated that as per the case of the prosecution the applicant was wearing a black striped- shirt at the time of the incident, however, when the sealed envelope containing the shirt was opened, the same was found to be one green and white shirt with "Hollister California" written on it. It is submitted that the testimony of PW4 -SI Narayan to that effect is also contradictory.

7. *Per contra*, learned APP for the State, on instructions from the Investigating Officer, submits that PW-6/Sagar has identified the present applicant as the person who was present at the spot alongwith the main shooter, namely, Ankit @ Sukha (stated to be proclaimed offender). It is submitted that the applicant was involved in the conspiracy hatched with the other co-accused persons and was present at the spot when the deceased was shot. It is submitted that the trial is still pending.

8. Heard learned counsel for the parties and perused the record.

9. The eye-witness PW-3/ Dinesh Jain who is the complainant was examined before the learned Trial Court and has not supported the case of the prosecution. The only witness who has identified the present applicant is PW-6/Sagar whose testimony has been placed on record. The said witness as per his own testimony identified the present applicant after a gap of one and a half months in the police station while the present applicant was in custody.

10. On a perusal of the testimony of PW-6, it is seen that at the time of examination of CCTV footage it had been recorded that after seeing the same, the witness had stated that it was not clear as to how many persons were sitting on the white scooty, however, when he saw it close-by on the date of incident, he could remember that there were three persons. In his cross-examination



dated 18.10.2024, he deposed that there was dark outside the factory at the time of the incident and that his Innova car was parked at a distance of around 16-17 ft. from the main gate where he was standing. Further, he deposed that there were three persons on the scooty and their faces were covered with clothes and owing to that, he did not disclose the description of the three persons he had seen in the factory on that night. He also did not disclose the number of the said scooty to the police. The aforesaid discrepancies, as pointed out by learned counsel for the applicant with respect to the identification of the present applicant is a matter of trial, including his identification by way of his clothes allegedly worn on the date of incident. On a pointed query to the Investigating Officer, it is submitted that there is no other eye-witness to the present incident, who has to be examined.

11. In the present case all the public witnesses have been examined. It is noted that out of 54 witnesses cited by the prosecution, only 7 have been examined so far and the trial is likely to take some time. As per the nominal roll dated 07.01.2025 authored by Superintendent of Prison, Central Jail No. 10, Rohini, Delhi, the applicant was first taken on custody on 03.08.2018 and as on 05.01.2025, he has undergone 4 years 6 months and 22 days in judicial custody. It is recorded in the nominal roll that the applicant was released on interim bail from 25.05.2021 under HPC guidelines and surrendered on 07.04.2023. The applicant is not previously involved in any other case. The other co-accused, namely, Ravi Kumar, Neeraj and Deepak have already been granted bail as pointed out hereinabove.

12. 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.
13. The application is allowed and disposed of accordingly.
14. Pending application(s), if any, also stands disposed of.
15. 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.
16. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
17. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MARCH 18, 2025/sn/Pc

Click here to check corrigendum, if any

BAIL APPLN. 3274/2024

Page 6 of 6