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

+ **BAIL APPLN. 3453/2024**

MOHD SHAKIR ALI

.....Petitioner

Through: Mr.R.P.Luthra, Mr.Himanshu Luthra,
Mr.Manjeet Singh, Mr.Paramdeep
Singh and Mr.Parveen kumar,
Advocates

versus

STATE OF NCT OF DELHI AND ANR.

.....Respondents

Through: Mr.Aman Usman, APP for State with
Inspector Rajesh, PS Dayalpur.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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03.02.2025

1. The present petition under Section 439 of the Cr.P.C has been filed seeking regular bail in case FIR No.712/2022 under Sections 302/365/201/34 of the IPC and Section 25/27 of the Arms Act registered at Police Station Dayalpur.

2. The case of the prosecution is that on 19.03.2022 a missing report of the deceased Sushila Devi, aged 40 years was registered on a complaint of her younger brother Mr.Chetan Kumar at Police Station Dayalpur, who stated that he received a call from her missing elder sister on 03.03.2022. However, when he subsequently tried to contact her, her phone was found to be switched off and on the very next date he visited the residence of his sister but she was not available. Accordingly he got the missing report registered on 19.03.2022.

3. As the police did not register the FIR, the complainant was constrained to file an application under Section 156(3) of the Cr.P.C. in



which the learned Metropolitan Magistrate directed for the registration of the FIR.

4. Learned counsel appearing on behalf of the petitioner submits that the co-accused, namely, Faizan @ Faizi, has already been granted regular bail by a Co-ordinate Bench of this Court vide order dated 14.08.2024 passed in Bail Appln. 1732/2024.

5. He submits that the role assigned to both the co-accused is almost similar inasmuch as, the case of the prosecution is that both the petitioner, as well as, the co-accused Faizan had fired one shot each at the deceased from the pistol which was recovered from the Baleno Car, *albeit* on the basis of petitioner's disclosure statement, but both the accused were allegedly travelling together in the said car.

6. He submits that the blood samples were recovered from the rear seat of the car after a period of about 10 months from the date of incident, which only shows that the blood stains allegedly lifted from Baleno Car, have been planted.

7. He submits that the petitioner is in custody since 16.01.2023 and all the material witnesses have already been examined. He further submits that the petitioner is a handicap person and a certificate that has been placed on record shows that he suffers from 40% disability. He submits that the petitioner's antecedents are clean and he is not a prime suspect. He further submits that the Car Baleno allegedly recovered in which the petitioner was found travelling along with the co-accused, had been stolen in respect of which the petitioner had already registered an FIR on 28.11.2019.



8. *Per contra*, learned APP appearing on behalf of the State argued on the lines of the status report. He submits that the deceased had gone missing on 03.03.2022 and there is an FIR bearing No. 27/2022 registered by the UP police on 12.03.2022 under Sections 302/201 of the IPC at Police Station Chola, Bulandshahar, UP. He submits that the UP police had cremated the deceased, however, the bullet which was recovered from the body of the deceased during post mortem was handed over by the UP police to the Delhi Police and the same was sent to the FSL. He submits that the FSL report shows that the said bullet has matched with the pistol recovered from the present petitioner.

9. He submits that the petitioner cannot claim parity with the co-accused Faizan, inasmuch as the order *vide* which the Co-ordinate Bench had granted bail to the co-accused itself creates distinction between the role of the present petitioner and co-accused Faizan. Elaborating further, he submits that the petitioner was the tenant in a flat which he had taken on rent from deceased Ms. Sushilwati, thus, the petitioner had a motive to kill the deceased as he wanted to grab the flat of the deceased. It is also contended that the Baleno Car in which the petitioner and the co-accused were apprehended on 16.01.2023 belonged to the present petitioner.

10. He further submits that the blood stains as contented by the learned counsel appearing on behalf of the petitioner cannot be said to be planted for the reason that the deceased was cremated by the UP Police in March, 2022 itself whereas the stains of blood were lifted from the car in or about January, 2023.



11. He submits that the post mortem report reveals that the deceased had suffered two bullet injuries, however, only one bullet was recovered from the body of the deceased which was found stuck in the body of the deceased.

12. Therefore, in the above backdrop he urges that the bail application of the petitioner be dismissed. He further submits that the trial is moving at a good speed. Out of 31 witnesses, 30 witnesses have already been examined from the main chargesheet. That apart, there are 11 more witnesses to be examined as cited in the Supplementary chargesheet.

13. He further submits that the antecedents of the present petitioner are not clean inasmuch as he is involved in FIR No. 6/2023 PS Mauris Nagar, under Sections 25/54/59 of the Arms Act and Section 482 of the IPC.

14. I have heard the learned counsel for the petitioner as well as learned APP for the State and have perused the record.

15. As per the case of the prosecution, the deceased Sushil Wati had gone missing on 03.03.2022 and the FIR came to be registered only on 16.12.2022. The arrest of the present petitioner as well as co-accused Faizan was made by the police on 16.01.2023 when they were found travelling in a Baleno car and the police allegedly recovered one country-made pistol and two live cartridges from the car and another FIR No. 06/2023 dated 16.01.2023 under Section 25 of the Arms Act was registered against them at PS Maurice Nagar in respect of such recovery.

16. The further case of the prosecution is that after their arrest the petitioner and co-accused Faizan gave their disclosure statements with



regard to the murder of deceased having been committed by them by shooting her with the country-made pistol, that was recovered.

17. The deceased had gone missing on 03.03.2022 and her dead body was recovered by UP Police on 04.03.2022 in District Bulandshahr where she was cremated, as at the relevant time the deceased could not be identified and her body remained unclaimed. There is evidently a gap of 10 months from the alleged date of incident and the arrest of the present petitioners. *Prima facie* there is no explanation as to what investigation was done by the police during this period. The starting point of investigation of the present case appears to be the aforesaid disclosure statements of the accused persons recorded after their arrest in another case on 16.01.2023. Intriguingly, no other incriminating material was available at that time against the accused persons.

18. The incriminating circumstances which have later been pressed into service by the prosecution, inter-alia, are – i) the alleged recovery of country-made pistol from the Belano Car in which the accused persons were found travelling; ii) FSL report pertaining to the matching of DNA profile generated from the blood stains lifted from rear seat of Belano car with the blood stains of the deceased lifted from her sweater, and iii) the FSL report from the ballistic division showing that the bullet recovered from the dead body had been discharged from the country made pistol allegedly recovered at the instance of accused persons.

19. Although the FSL report states that the DNA profiles generated from blood sample of deceased and the blood stains lifted from the rear seat of



Belano car are from the same source but at this stage the submission of the learned counsel for the petitioner that the blood stains lifted from the rear seat of Belano are planted cannot be brushed aside altogether, regard being had to the fact that the said blood stains were allegedly lifted after a period of 10 months. However, this aspect will be considered by the learned trial court during the course of trial but at this stage benefit of the same can be given to the petitioner when the case is based only on circumstantial evidence and there is an inordinate delay both in the lifting of alleged blood stains as well as arraigning the present petitioner as an accused.

20. In so far as recovery of country-made pistol from the accused persons is concerned, again the submission of the learned counsel for the petitioners is that the said recovery has also been planted. Though it will not be appropriate for this Court to make any comment on the same at this stage while considering the bail plea of the petitioner, but suffice it to say that recovery by itself is not a substantive piece of evidence and it can be used only for corroboration. Likewise, the FSL from the forensic division, which states that the bullet recovered from the dead body of the deceased was discharged from the country-made pistol allegedly recovered at the instance of accused persons, will assume relevance after the trial court finds the recovery to be genuine.

21. Another aspect that cannot be lost sight of is that the co-accused Faizan has already been enlarged on bail by this Court *vide* order dated 14.08.2024 passed in Bail Application No. 1732/2024. Though the learned APP tried to distinguish the role of the present petitioner from that of co-accused Faizan, but a perusal of the chargesheet wherein the disclosure



statement of the present petitioner has been referred to, shows that both, the petitioners as well co-accused Faizan had fired one shot each at the deceased because of which she died. Further, it is the case of the prosecution itself that both the petitioners as well as co-accused Faizan were arrested together when they were found travelling in Baleno car and the country-made pistol as well as two live cartridges were also recovered from the Baleno car, *albeit* on the basis of the disclosure statement of the present petitioner. Therefore, the role attributed to the present petitioner, as well as, co-accused Faizan appears to be similar. Thus, the petitioner is entitled to bail also on the ground of parity.

22. In so far as the petitioner's involvement in another case under the Arms Act is concerned, it is the same case which came to be registered when the petitioner and co-accused Faizan were allegedly found travelling in Belano car from which the country-made pistol and two live cartridges were recovered. The petitioner is stated to have been enlarged on bail in the said case which position is not contradicted. Even otherwise, the involvement in another case cannot be the sole ground for rejection of bail.

23. In so far as petitioner's availability during trial is concerned, the same can be ensured by imposing appropriate conditions. The petitioner is in judicial custody since 16.01.2023 and the facts and circumstances of the present case do not warrant continuation of his custody to await the outcome of trial as the same is likely to take long time since 13 more witnesses are yet to be examined, as per the submissions of the learned APP appearing for the State.



24. Considering the aforesaid facts and circumstances, this Court is of the view that petitioner has made out a *prima facie* case for grant of regular bail. Accordingly, the petitioner is granted regular bail subject to his furnishing a personal bond in the sum of Rs. 35,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/JMFC/Duty JM, further subject to the following conditions:

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner/applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses or any family members of the witnesses.

25. It is clarified nothing mentioned above shall be construed as expression of opinion on the merits of the case.

26. The application is disposed of.

27. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

28. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

FEBRUARY 3, 2025/SV