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

+ **BAIL APPLN. 3533/2024**

AKSHAY

.....Petitioner

Through: Mr. Jaiveer and Mr. Irshad, Advs.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh, APP for the State.
SI Dharmendra Sharma, PS Patel Nagar, Delhi.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

% **ORDER**
14.01.2025

1. This is a petition filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') r/w Section 482 CrPC seeking regular bail in FIR No. 329/2020 registered at P.S Patel Nagar, under Section 307/506/201/120B/34 IPC & 25/27 Arms Act, 1959.
2. The case of the prosecution is that on 10.07.2020 around 05.40 PM, the complainant/Lakshay Nagpal was shot on the right leg by two assailants who came on motorcycle when the complainant was standing in front of HDFC Bank, East Patel Nagar, Delhi. The complaint suspected his brother-in-law viz., Vishal Sharma, who is married to his sister, behind the attack. Hence, the



FIR was registered.

3. Learned counsel appearing on behalf of the petitioner submits that the testimony of the complainant has already been recorded and he has only identified co-accused Ram Dev *alias* Aman as the person who shot the complainant. He submits that the learned Trial Court had dismissed the bail application of the petitioner *vide* order dated 24.07.2024, on the ground that the complainant has only been partly examined-in-chief, material witnesses are yet to be examined and there is an apprehension that if bail is granted to the petitioner he might flee from justice and harass the witnesses.

4. He submits that the investigation in the present case is complete and the recovery of weapon has already been made, therefore, the custody of the petitioner is no more required. He submits that as per the prosecution, the complainant has suffered injury on his right leg, hence, the case under Section 307 IPC is not made out.

5. He submits that the main accused Vishal Sharma, who is stated to be mastermind of the alleged attack has already been granted bail by the Coordinate Bench of this Court *vide* order dated 12.07.2023 passed in BAIL APPLN. No. 2292/2023.

6. He further submits that the petitioner is in custody since 14.07.2020 and having regard to his long incarceration, he may be granted bail.

7. *Per contra*, learned APP has argued on the lines of the status report. He submits that the CCTV footage which has been filed along with the charge sheet shows that at the time of attack, the petitioner was wearing a helmet and thus, he could not be identified by PW-1/complainant.

8. He submits that the offence is of serious nature and there is a possibility that in the event the petitioner is released on bail, he may tamper with the



evidence. He further submits that there is another case registered against the present petitioner under the Arms Act.

9. In rejoinder, the learned counsel for the petitioner submits that though there is another case pending against the present petitioner under the Arms Act but in the said case as well, the petitioner has been enlarged on bail.

10. I have heard learned counsel for the petitioner as well as learned APP for the State.

11. This Court is conscious of the fact that credibility of the witnesses as well as the probative value of the evidence is to be considered at the stage of evidence. Therefore, the testimony of PW-1 is being looked into only for the limited purpose of deciding the present application.

12. A perusal of the said testimony of the complainant, who was examined as PW-1, shows that he has identified Ram Dev *alias* Aman as one of the assailants, whereas the present petitioner has not been so identified.

13. It is also not in dispute that co-accused Vishal Sharma, who is stated to be mastermind of the present attack on the complainant, has already been granted bail by this Court.

14. At this stage the submission of the learned counsel for the petitioner that since the gunshot is on the leg of the complainant and not on any vital part of the body, therefore, the offence under Section 307 IPC is not made out cannot be said to be wholly without substance, though the said aspect will eventually be considered by the learned Trial Court after the conclusion of the trial.

15. The petitioner is in custody since 14.07.2020 and his custody is no more required for investigation or for any other purpose.

16. In so far as other case having been registered against the present



petitioner is concerned, the petitioner is stated to be on bail in the said case. Further, the bail application cannot be dismissed solely on the ground that other cases are registered against the petitioner.¹

17. As regards, the apprehension expressed by the learned APP that the petitioner on being released on bail may tamper with the evidence, suffice it to note that the complainant/material witness in the present case has already been examined. However, such an apprehension expressed by the learned APP can be allayed by imposing appropriate conditions while granting bail.

18. Considering the aforesaid circumstances in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 15,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/JMFC/Duty JMFC, 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 shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
- d) The petitioner shall not change his address without prior intimation to the IO concerned.

19. The petition stands disposed of.

¹ Prabhakar Tewari vs. State of Uttar Pradesh and Another, (2020) 11 SCC 648



20. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.
21. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
22. Order *dasti* under signatures of the Court Master.
23. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

JANUARY 14, 2025/NG