



\$~9

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

+ **BAIL APPLN. 3863/2024**

MUSHIR

.....Petitioner

Through: Mr. Kush Sharma, Ms. Ashiya Khan,
Ms. Neha Kumari, Mr. Abdul Vahid,
Mr. Tasleem Arif, Mr. Mohd. Riyaz
and Mr. Nishchaya Nigam,
Advocates.

versus

THE STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP for State
with Mr. Karandeep Singh, Advocate.
Mr. Anugraha, SI, PS-Welcome.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

09.01.2025

%

1. The present petition seeks grant of regular bail in relation to FIR No. 191/2019 under Sections 302/34,307, 120B of the Indian Penal Code, 1860¹ read with Section 25/27 Arms Act, 1959 registered at PS-Welcome.
2. Briefly stated as per the contents of the FIR, the case of the prosecution is that on 31st March, 2019, at about 8:00 PM, one Shahid came to the house of the complainant i.e. Danish Khan @ Sonu and told him that his brother-in-law (*sala*) namely Mehtab had abused him in filthy language and he would not leave him. At that time Mehtab was not home. Thereafter, at about 10:30 pm, the complainant came down in his *Gali* after hearing

¹ "IPC"



noise and saw that the accused Mushir along with co-accused persons Salman @ Khan, Mohsin, and 2-3 other boys were abusing and firing in front of his house while calling out Mehtab's name. The complainant came out and tried to stop them, however, Nawajish fired upon Mehtab who was on the first floor and ran towards Gali no. 5 while firing. When the complainant tried to chase, all of them fired towards one more boy who was going ahead of the complainant and fled away from there while brandishing their weapons in the air. Thereafter, the complainant immediately returned to his house and Mehtab was taken to GTB Hospital by his brother Aftab and Itafaq @Dabu on scooty and he was declared brought dead.

3. Subsequently, the Petitioner absconded and was declared as a proclaimed offender. However, on 4th June, 2024, he was arrested and sent to judicial custody. As per the nominal roll dated 13th November, 2024, he has been in custody for 5 months and 10 days. In the meantime, the trial has also proceeded, wherein the statements of the witnesses have been recorded.

4. The Petitioner contends that he has no role to play and has been falsely implicated. He submits that in the CCTV footage, on which the prosecution placed reliance, the Petitioner cannot be seen. Pertinently, it is argued that the co-accused, Nawajsh, who is son of the Petitioner, has been granted bail by this Court *vide* order dated 12th January, 2024. The other co-accused, Shahid @Mota and Nawab Salman @Khan and have also been granted bail by the sessions court. Moreover, the prosecution has cited 30 witnesses, out of which 14 have been examined. The public witnesses also stand examined. The material witnesses have turned hostile and have failed to support the case of the prosecution. Even the complainant has not supported the case of the prosecution and has not identified the Petitioner.



Pertinently, no recovery was made from the Petitioner.

5. The bail application is strongly opposed by the APP for the State. The Petitioner's contention that he is not seen in the CCTV footage is strongly denied. He further submits that the Petitioner's conduct during the investigation is also to be taken into account. The Petitioner evaded the arrest which led to the proceedings under Section 82 of the Code of Criminal Procedure, 1973 against him which resulted in declaration of the Petitioner as a proclaimed offender. He was subsequently apprehended on 4th June, 2024. Moreover, there is scientific evidence available with the prosecution to establish the guilt of the Petitioner. The trial is progressing and is likely to conclude soon and therefore the Petitioner should not be released on bail.

6. The Court has considered the aforementioned contentions. Pertinently, the allegations against the Petitioner in the FIR is essentially regarding his presence at the time of the incident. No specific role has been ascribed to the Petitioner in the FIR. This Court has while granting bail to Nawajish,² the person accused of firing at the deceased, and the son of the Petitioner, has noted as follows:

"12. A perusal of the testimonies of PW-6, PW-7 and PW-8 from whose possession the three DVRs attached to the cameras installed at their respective premises were recovered shows that they have not identified the respective DVRs when the same were shown to them in the court.

13. A perusal of the testimony of PW-6 also shows that he has stated that he did not put his signatures on the DVR, which was handed over to the Investigating Officer.

14. Insofar as the testimonies of eye witnesses, namely, Aftab who was examined as PW-I, Danish who was examined as PW-2 and Intekhab who was examined as PW-3 are

² *Nawajish v The State NCT of Delhi*, Bail Application No. 4301/2023



concerned, it is clear that they have not at all supported the case of the prosecution.

15. Though, the ultimate call on probative value of the evidence, the creditability and reliability of the testimonies of the witnesses, will be taken by the learned Trial Court at the stage of trial but for the purposes of considering the bail application, this Court cannot be unmindful of the fact that none of the prosecution witnesses have supported the case of the prosecution, which coupled with the long incarceration of approximately two years and nine months, furnishes the justification for grant of bail to the petitioner.”

7. Thus, this court, for the limited purposes of bail, has already observed that none of the prosecution witnesses have supported the case of the prosecution. The Nominal Roll dated 13th November, 2024, notes that the Petitioner has been in judicial custody for a period of 5 months and 10 days and that he does not have any other criminal record. Furthermore, the prosecution has cited 30 witnesses, out of which 14 have been examined, therefore, the conclusion of trial is nowhere in sight. Furthermore, since all material witnesses have been examined, there is no possibility of the Petitioner influencing the material witnesses in the event he is enlarged on bail. In view of the aforementioned facts and circumstances, this court is inclined to grant bail to the Petitioner.

8. It is accordingly directed that the Petitioner shall be released on regular bail on furnishing a personal bond in the sum of INR 50,000/- along with one surety of the like amount to the satisfaction of the concerned Court/Metropolitan Magistrate, subject to the following conditions:

8.1 The Petitioner will not leave the country without prior permission of the Court.

8.2 The Petitioner shall provide permanent address to the Trial Court. The



Petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in his residential address.

8.3 The Petitioner shall appear before the Court as and when the matter is taken up for hearing.

8.4 The Petitioner shall provide all mobile numbers to the concerned IO, which shall be kept in working condition at all times. The Petitioner shall not switch off his phone or change his mobile number without prior intimation to the concerned IO.

8.5 The Petitioner will report to the concerned IO on the second and fourth Friday of every month, at 4:00 PM, and will not be kept waiting for more than an hour.

8.6 The Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

9. Needless to state, any observations concerning the merits of the case are solely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of opinion on the merits of the case.

10. A copy of the order be sent to the Jail Superintendent for information and necessary compliance.

11. With the foregoing directions, the present application is disposed of. Pending application(s), if any, are disposed of as infructuous.

SANJEEV NARULA, J

JANUARY 9, 2025

nk