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

+ **BAIL APPLN. 4233/2024**

FAIZAN

.....Petitioner

Through: Mr. Kartickay Mathur, Mr. Shanker
and Mr. Shubham Mishra, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh, APP for State with Insp.
Harkesh Gaba, PS. DPA, Wazirabad
and Insp. Sachin Kumar Verma, PS.
Krishna Nagar.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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14.02.2025

1. The present petition has been filed under Section 483 read with Section 528 BNSS seeking regular bail in connection with FIR No. 426/2017 under Sections 302/120B/34 IPC read with Sections 25/27/54/59 of Arms Act registered at Police Station Krishna Nagar, Delhi.
2. The case of the prosecution is that the deceased was shot by two persons riding on a motorcycle. As per the prosecution version, the petitioner was driving the motorcycle whereas co-accused Rehan was the pillion rider who fired upon the deceased Jaffar Qureshi from a pistol on account of which Jaffar Qureshi fell down on the earth. Thereafter, a motorcycle riders fled away towards Gandhi Nagar Railway Phatak. The eye witness Salman Qureshi is stated to have the seen the assailants at the time of incident. The injured was shifted to GTB Hospital where he was declared brought dead.
3. Mr. Kartickay Mathur, the learned counsel for the petitioner submits



that the case of the prosecution is premised on the testimony of sole eye witness namely Salman Qureshi. He further invites attention of the Court to the testimony of Salman Qureshi. He submits that there are inconsistencies in the testimony on the material aspect of the matter.

4. Elaborating on his submissions, he submits that in his examination-in-chief, the said witness has testified that he had identified the offenders by their photographs which were shown to him in the police station whereas during his cross examination he has stated that though, he had seen the accused at the place of incident but he was again shown the accused in the police station and it is only after the police told him that the accused persons had disclosed their involvement, he became sure that it is the petitioner, as well as, the co-accused Rehan who had committed the incident. He submits that the tenor of the testimony of PW-2 shows that the said witness was not sure about the involvement of the petitioner in the incident.

5. He further invites attention of the Court to the cross-examination of PW-2/Salman Qureshi to contend that the said witness has admitted that he was the knowing the accused as the PW-2 himself as well as the accused persons are in the business of scrap and the deceased Jaffar Qureshi was also in the same business. He submits that since the witness was so well known to the accused person, there was no occasion for him to be tentative about the identification of the accused persons.

6. He further contends that the petitioner is in custody since 23.11.2017 and the nominal roll shows that he has been incarcerated for a period of 05 years 11 months and 28 days as on 17.12.2024.

7. Mr. Mathur further contends that the prosecution has cited 46 witnesses, of which only 18 witnesses have been examined till date,



therefore, the conclusion of trial is likely to take long time. Since, it is a case premised on the testimony of sole eye witness, therefore, the same is ought to be taken with a pinch of salt.

8. He submits that the sole eye witness has already been examined, therefore, there is no occasion for the petitioner to influence any material witness in the event he is enlarged on bail. In so far as the petitioner's other involvements as mentioned in the nominal roll are concerned, the submission is that the petitioner is already on bail in the said cases.

9. *Per contra*, the learned APP has argued on the lines of the Status Report. He submits that at this stage, appreciation of evidence cannot be done. He further submits that since the offence is serious, therefore, length of incarceration cannot be a relevant factor for deciding the bail application of the petitioner. He thus, urges that bail petition of the petitioner may be dismissed.

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

11. This Court is conscious of the fact that at this stage, the probative value of the testimony, as well as, the reliability of the witness cannot be gone into, as the same is within the domain of the learned Trial Court.

12. However, for the limited purpose of deciding the bail application, this Court has perused the testimony of PW-2. There appears to be some substance in the submissions of the learned counsel for the petitioner that there are contradictions in the testimony of the PW-2 as to the identification of the accused. Further, the submission of the learned counsel to the effect that since the witness was so well known to the accused persons, there was no occasion for him to be tentative about the identification of the accused,



does not appear to be wholly without merit. The impact of all these aspects will, however, be considered at the stage of trial but at this stage the said aspects tilt the balance in favour of the petitioner for grant of bail having regard to the petitioner's long custody of six years and the settled law that in a case based on the testimony of sole eye-witness, the evidence of such solitary eye-witness calls for heightened scrutiny.

13. Further, the seriousness of the offence is not the only factor to be considered while deciding the bail application. The delay in commencement, as well as, conclusion of trial cannot also be overlooked. The prosecution has cited as many as 46 witnesses, of which only 18 witnesses have been examined till date, therefore, the conclusion of trial is nowhere in sight. This Court cannot lose sight of the fact that the petitioner is in custody for the past more than 06 years and he cannot be kept behind bars for indefinite period to await the outcome of trial, especially when at this stage there is presumption of innocence in his favour.

14. It is also not in dispute that the petitioner was released on interim bail in the year 2024 from 08.05.2024 to 11.05.2024 and he did not misuse the said liberty.

15. In so far as the petitioner's availability during trial is concerned, to ensure the same appropriate conditions can be imposed by this Court in that behalf. Further, since the sole eye witness has been examined, there is no possibility of petitioner influencing the material witnesses in the event he is enlarged on bail.

16. 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 admitted to bail subject to his furnishing a



Personal Bond in the sum of Rs. 20,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CJM/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 shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
17. The petition stands disposed of.
 18. 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.
 19. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
 20. Order *dasti* under signatures of the Court Master.
 21. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 14, 2025/dss