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

+ **BAIL APPLN. 4417/2024**

HARI KISHAN

.....Petitioner

Through: Mr. Vineet Jain, Advocate.
versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for the State
with Insp. Amit Kumar, ATO,
Wazirabad and Insp. P.C. Yadav, IO.
Mr. Mohd. Changez Ali Khan,
Advocate for complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% **05.05.2025**

1. This hearing has been done through hybrid mode.
2. The present application under Section 483 of the BNSS seeks regular bail in case FIR No. 227/2020, under Sections 302/120B/34 of the IPC and Section 27 of the Arms Act, registered at P.S. Wazirabad.
3. The case of the prosecution as per status report dated 13.01.2025, authored by SHO, P.S. Wazirabad, is as under:

“That an information regarding firing was received at PS Wazirabad vide DD No.45-A dated 24.5.2020 and the same was entrusted to ASI Virender, who reached at the spot and inquired the matter. During inquiry, it was revealed that three unknown persons, who came on a motorcycle, fired some rounds at the house of the complainant Rambir Singh. Three empty cartridges ere also recovered from the spot. Subsequently, case FIR No. 212/2020 U/s 27/54/59 Arms Act was registered at PS Wazirabad and investigation was taken up. Meanwhile, on 01/06/2020, another firing incident was reported at the same house vide DD No 71 A dated 1.6.2020 PS Wazirabad. This time, four assailants came on



two motorcycles and fired many rounds mercilessly on the shop-keeper namely Rakesh Chauhan, who happened to be the tenant of aforementioned Rambir Singh. Rakesh Chauhan sustained bullet injury and he was rushed to the hospital for treatment. Thereafter, the present case FIR No 227/2020 dated 01.06.2020 u/s 307/34 IPC & 27 Arms Act was registered at PS Wazirabad on the statement of eye witness namely Sh Vishal Chauhan (brother of the injured) and investigation was taken up. On 8.6.2020, the injured Rakesh Chauhan succumbed to gun-shot injuries. Hence, the section of law was changed into 302 IPC. During the course of investigation, both the incidents were found to be the part of same conspiracy.

2. That during the course of investigation, CCTV footages of the surrounding area of the spot were analyzed and it revealed that the assailant came on the motorcycle no DL10SY 9314 colour-black and DLSEA 0435 at the spot. The ownership of both motorcycle was obtained and it was found that the motorcycle no DL 10 SY 9314 is registered in name of Ashish Kumar and he disclosed that on the day of incident, his motorcycle was borrowed his friend Rahul @ Badi Ankh and Vishal and the second motorcycle was found registered in name of Akhtar Khan R/o A 178 Khanpur, J J Colony Delhi.

3. That on 5/6/2020 Imran @ Akhtar Khan and Honey @ Vishal were arrested in the present case and they disclosed that they fired on a person in Jagatpur Village on the direction of one Hari Kishan. He also disclosed that one swift car no DL 8CAV 0389 was also used in the incident. During the investigation, it revealed that the said car was in possession of Sonu Phalwan @ Yogesh Singh.

4. That on 8.6.2020, Sonu Phalwan @ Yogesh Singh joined the investigation of the case and he was interrogated and during the sustained interrogation, he disclosed his involvement in present case and also in the earlier firing incident on 23/5/2020. He also disclosed that he hatched conspiracy on the directions of his friend namely Ajeet, resident of Jagatpur Village. Ajeet has previous enmity qua property dispute with aforesaid Rambir. In the said conspiracy, Prince Tewatia and Hari Kishan were also found involved. It is a long chain involving several persons including co-accused persons namely Imran @ Akhtar, Honey @ Vishal, Vikrant, Rahul @ Fauzi, Rahul @ BadiAankh.

5. That during investigation, the CDR's of the mobile phone of the accused Yogesh Singh @ Sonu Pahalwan and Ajeet were analyzed and it was revealed that he made outgoing call to co



accused Ajeet on 23-05-2020, which is after the firing incident of FIR No.212/20. It is further revealed that the accused Yogesh Singh @ Sonu and co-accused Ajeet were in constant touch with each other throughout the period including on dated 01-06-2020.

6. That Yogesh Singh @ Sonu Pahalwan disclosed that Prince Tewatia and Hari Kishan are his friends. Prince Tewatia was running in jail & on 16.5.2020, he was released on interim bail in fir No 190/19 u/s 186/353/307/34 IPC Special cell. On same day, Yogesh Singh @ Sonu Phalwan organized party in Vivek Vihar at the house of his friend namely Udit Arora in celebration of release of Prince Tewatia. Yogesh Singh @ Sonu Phalwan also organized another party at Udit Arora's house on 23.5.2020 and 1.6.2020 on the dates of both firing incidents. Yogesh Singh @ Sonu Palhwan narrated his conspiracy to Prince Tewatia, on which he agreed to execute the plan i.e. to shoot a person with other co-accused Hari Kishan, Vikrant, Rahul, Hunny and Imran. As per the plan, Prince Tewatia arranged the fire arms and supplied to his associates Vikrant, Rahul, Hunny and Imran and they were given the task of opening fire on the complainant's brother. After execution the plan, co accused returned the fire arms to Prince Tewatia.

7. That after the incident, the accused Prince was absconding. Later NBWs of accused Prince Tewatia, Ajeet Singh, Rahul @ Fauji @ Pankaj and Vikrant were obtained and thereafter proceeding Us 82 Cr.PC against Prince Tewatia, Ajeet Singh, Rahul @ Fauji @ Pankaj and Vikrant were initiated by the Hon'ble Court. Then on 24.10.2020, an information was received regarding arrest of the accused Prince Tewatia S/o ShyamLal R/o B 212 Near MCD School Duggal Colony Khanpur Delhi by Special Cell in case FIR No 268/20 U/s 25 Arms Act PS Lodhi Colony Delhi.

8. That after taking permission from Hon'ble Court, the accused Prince was interrogated in present case and he disclosed his involvement in present case. Thereafter, the accused Prince Tewatia was arrested on 2.11.2020 and his one day PC remand was obtained to recover the weapon of offence, but, the weapon of offence could not be recovered. As the accused Prince Tewatia did not get the fire arms recovered and he did not cooperate in the investigation, therefore, section 201 IPC was added for destroying the evidence against the accused Prince.

9. That on 9.7.2020 the other co accused Harikishan was also arrested by Special Cell in FIR No 172/20 U/s 186/353/307/34 & 25/27 Arms Act. Later, he was interrogated and arrested in present



case as well. The fire arm was recovered from his possession by special cell and the empty cartridges recovered from spot (place of firing in the present case) were sent to FSL for examination. The expert opined that *"On the basis of microscopic examination conducted in the laboratory, it is opined that one 7.65 mm cartridge case (marked C/1) contained in parcel No A had been fired from the country made pistol (Chambered for 7.65 mm cartridges) (marked W/1) contained in Parcel No A received inn CFSL vide case No CFSL-2020/F-327 in question."* As per the ballistic result of the empty cartridge recovered from spot was found fired from the weapon recovered from the possession of the accused HariKishan by Special cell.

10. On 31.8.2020, another co accused Ajeet Singh surrendered before the Hon'ble Court. He was interrogated and arrested in the present case. He disclosed all the conspiracy hatched by him with his friend Yogesh @ SonuPhalwan. Yogesh @ Sonu Phalwan hired shooters Prince and Harkishan to execute the plan of firing. CDR of Ajeet's mobile number also collaborated his version. Thereafter, three days PC remand of the accused Ajeet Singh was obtained to recover the mobile phone used by the accused him but the said mobile phone could not be recovered as the accused Ajeet Singh had destroyed the said mobile phone, therefore, section 201 IPC was added for destroying the evidences against accused Ajeet Singh. The supplementary charge sheet against the accused Ajeet Singh has been filed in the Hon'ble Court. On 26/04/2023 co-accused Vikrant @ Pintu @ Mental S/o Late Ramesh R/o B-158, Tigri Extension, Sangam Vihar Delhi, Age 25 Years was also arrested in present case.

Grounds for opposing present bail application

- a) The Petitioner -Accused is habitual offender and is involved in 3 cases and there is strong likelihood that he would indulge in further criminal activity if released on bail.
- b) Accused Yogesh (Sonu Phalwan and Ajeet were the main conspirator to hatch the entire conspiracy. They further hired Prince Tewatia and Harkishan to execute the plan of firing. Accused Prince Tewatia arranged man power and arms to execute conspiracy hatched by his friend Yogesh @ Sonu Phalwan and Ajeet. That on 5/6/2020 Imran Akhtar Khan and Honey @ Vishal were arrested in the present case and they disclosed that they fired on a person in Jagatpur Village on the direction of one Hari Kishan.
- c) Accused Prince was present in the party at house of PW Udit



Arora in Vivek Vihar organized by main Conspirator Yogesh @ Sonu Phalwan on 16.5.2020, 23.5.2020 and 1.6.2020. PW Udit Arora confirmed this fact in his statement.

d) The present matter is at the stage of examination of prosecution witnesses and there is every possibility that accused may jump bail and influence prosecution witnesses & if he has been granted bail he may indulge in similar crimes.

e) To prevent the accused from making any inducement, threat or promise to complainant or any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the Police office. To prevent the accused from causing the evidence of the offence to disappear or tampering with such evidence in any manner.”

4. Learned counsel appearing on behalf of the applicant submits that as per the case of the prosecution the main accused persons namely Yogesh Singh @ Sonu Pehlwan and Ajit Singh have already been granted bail. Yogesh Singh @ Sonu Pehlwan has been granted bail by the learned Trial Court *vide* order dated 14.12.2020 and the other co-accused, namely Ajit Singh, has been granted bail by a Coordinate Bench of this Court *vide* order dated 13.02.2024 in BAIL APPLN. 3390/2023. It is further submitted that evidence *qua* the present applicant is disclosure statement of Yogesh Singh @ Sonu Pehlwan. It is submitted that the present applicant has been in custody since the date of arrest, i.e., 13.07.2020 and the prosecution has cited 51 witnesses, out of which 4 have been examined so far and the trial is not likely to conclude any time soon.

5. *Per contra*, learned APP for the State assisted by learned counsel for the complainant submits that the applicant was involved in the conspiracy hatched on behalf of the accused person, namely, Yogesh Singh @ Sonu Pehlwan. The pistol which has been alleged to have been used for firing, was subsequently recovered from the present applicant by the Special Cell. It



is further submitted that the applicant has previous involvements as recorded in the nominal roll.

6. The co-ordinate Bench of this Court while granted bail to co-accused, Ajit Singh in BAIL APPLN. 3390/2023 *vide* order dated 13.02.2024 had observed as under:

“27. It is apparent from the case of the prosecution as pleaded, that the applicant has been made as an accused basis the statement of Sh.Rambir Singh, who has stated that he has a property dispute with the applicant and he suspects the applicant to be involved in the attack on him. It is also based on the alleged CDR analysis which shows the applicant and the co-accused Sonu Phalwan @ Yogesh Singh to be in contact with each other around the time of both the attacks, that is, on the intervening night of 23- 24.05.2020 and on 01.06.2020.

28. The above piece of evidence at least *prima facie* and only for the purposes of the present application, appears to be rather weak. As per the prosecution, the link between the applicant to the main accused, that is, the boys on the motorcycles who allegedly fired on the deceased is through Sonu Phalwan @ Yogesh Singh, and then through Prince Tewatia. Sonu Phalwan @ Yogesh Singh has been granted bail by the learned Additional Sessions Judge *vide* order dated 14.12.2020. The applicant, however, continues to languish in jail since 31.08.2020. The complainant that is, Rambir Singh, has, in fact, filed a petition seeking further investigation. Therefore, the trial is not likely to end very soon.

30. As far as the submission of the learned APP and the learned counsel for the complainant that the applicant is involved in other cases, the learned counsel for the applicant has explained the same, as has been recorded hereinabove. The same cannot be a ground to deny the bail to the applicant if he is otherwise entitled to the same in the present case.

31. The applicant merely because earlier he was declared as a Bad Character, cannot be denied bail on that ground.

32. On the submission of the learned counsel for Mr.Rambir Singh, of the perceived threats from the applicant, in my view, the same appears to be without any basis as the applicant has been in custody since 31.08.2020. As noted hereinabove, Sonu Phalwan @ Yogesh



Singh has been released on bail vide order dated 14.12.2020. It is not stated that the said order has been challenged by either the State or Mr.Rambir Singh, complaining of any threat received. In any case, in case the applicant misuses the indulgence granted, the State or Mr.Rambir Singh can always move an application seeking cancellation of bail, however, only on the basis of an apprehension that the applicant may misuse the indulgence of him being released on bail, cannot be a ground to deny him his constitutional right to life and liberty guaranteed under Article 21 of the Constitution of India.

33. Keeping in view the nature of allegations that have been made by the prosecution against the applicant, and testing the same on the parameters summarised in the judgment of the Supreme Court in **Deepak Yadav v. State of Uttar Pradesh & Anr.**, (2022) 8 SCC 559, in my view, the applicant has been able to make out a case for being released on bail.”

7. Admittedly, the case of the prosecution *qua* the present applicant is disclosure statements of the co-accused persons. It is further alleged that that the pistol alleged to have been used by the shooters was recovered from the present applicant. The nominal roll shows that the applicant has been in custody since 13.07.2020 and that he is on bail in the other cases as mentioned in the nominal roll. It is further noted the co-accused Ajit Singh was also shown to have previous involvements, however, in view of the aforesaid reasoning, bail was granted to him. The applicant is also similarly placed.

8. In totality of the facts and circumstances of the case, the application is allowed. The applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs. 25,000/- with one local surety of like amount subject to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

i. The Applicant will not leave the country without the prior permission of the learned Trial Court.



- ii. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his 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 shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the Ld. Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses, especially the complainant-Shri Rambir Singh and/or any member of the victim's family.
9. The application is allowed and disposed of.
10. Pending applications, if any, also stand disposed of.
11. 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.
12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
13. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 5, 2025/bsr/pr

[Click here to check corrigendum, if any](#)