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

+ **BAIL APPLN. 4425/2024**

ATIF MOHAMMAD @ NAWAB

.....Petitioner

Through: **Ms. Nusrat Hussain, Advocate**

versus

THE STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: **Mr. Laksh Khanna, APP for State
along with SI Sahil, PS: Karol Bagh**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **28.01.2025**

1. This petition has been filed seeking regular bail in FIR No.496/2024 registered at P.S. Karol Bagh under Sections 307/34 of the Indian Penal Code ('IPC') & Sections 25/27 Arms Act, 1959.

2. The case of the prosecution was registered on the statement of the complainant i.e. Mayank Nagarath who stated that he is the owner of 'F-Bar Club' located at Pusa Road, Karol Bagh, Delhi. It is stated that on intervening night of 19.6.2024-20.6.2024, two group of persons namely (i) Sahil alias Bouncer with his friends; and (ii) the other namely Atif Malik s/o Iftikhar Ahmed and Anas Khan along with their friends including a girl had come to the Club. It is stated that altercation amongst both the two groups had occurred in the club, therefore, the complainant and his associates had to intervene in the matter and they had managed to pacify the situation.

2.1. It is stated that the Sahil and his associates left the said Club on the request of the complainant. After some time, the other group of persons



which included the Applicant/Atif Mohammad alias Nawab s/o Md. Atiq started quarreling with the complainant and his staff, as to why they intervened in the quarrel between them and Sahil as well as his associates. It is stated that the accused persons threatened and abused the complainant and his staff members.

2.2. It is stated that the accused persons after extending the said threat had also left the place of incident in a black Verna Car. It is stated that after some time, accused persons came back in the black Verna Car and one of the accused namely Anas Khan started firing from the running car towards the staff standing in front of the club. Thereafter, the said case was registered and the investigation was initiated.

2.3. It is stated that during the course of investigation crime scene was inspected by Crime Team and total 10 empty cartridges were found at spot, which were taken into police possession.

2.4. It is stated that CCTV footages of spot and nearby places were analysed and black Verna car was traced as UP14FY5667.

2.5. It is stated that investigation revealed that there were five (5) accused persons involved in the firing incident, who were sitting in the black Verna Car namely (i) Atif s/o Iftikhar Ahmed; (ii) Anas Khan; (iii) Atif Mohammad alias Nawab s/o Md. Atiq (Applicant); (iv) Sohail alias Shelly; and (v) girl namely Adiba.

2.6. It is stated that on the basis of a secret information received, first the girl i.e. Adiba was arrested on 03.06.2024. It is stated that Adiba disclosed what happened on the date of the incident and in her statement, she stated that firing was done by Anas Khan with the pistol. It is stated that during investigation, the Applicant herein i.e. Aatif Mohammad was arrested on



25.06.2024 and he as well states that the firing was done by Anas Khan. It is stated that during further investigation accused namely Atif Malik was arrested and on his instance the black Verna car used in commission of offence was also recovered and taken into police possession. It is stated that co-accused Anas Khan was formally arrested on 16.12.2024 however the weapon of offence could not be recovered from him. It is stated that co-accused Anas Khan disclosed that he had the pistol and had done the firing. It is stated that co-accused Sohail alias Shelly is absconding and yet to be arrested.

2.7. It is stated that the Chargesheet of the case has been filed before the concerned Court.

3. Ms. Nusrat Hussain, learned counsel for the Applicant/Atif Mohammed states that in the fight that took place between the two group of persons inside the club, no active role has been attributed to the Applicant in the entire Chargesheet.

3.1. She states that the entire story of the prosecution is a concocted one qua the Applicant. She states that the prosecution has alleged that the Applicant was present on the backseat of the black Verna Car when the accused Anas had fired the shot towards the club; however, to substantiate the presence of the Applicant in the Car at the time of firing, the prosecution has only relied upon the disclosure statement of the accused persons. She states that there is no independent corroborative evidence i.e. CCTV footage, CDR or the statement of eye-witnesses who would place the applicant at the scene of the incident.

3.2. She further states that in the said incident no person has suffered any injury. Furthermore, that investigation qua the present accused has already



been completed and chargesheet as well stands filed before the concerned Court. She states that since the trial is likely to take a considerable amount of time; therefore, no useful purpose would be served for keeping the Applicant in judicial custody.

3.3. She further states that the present Applicant deserves the benefit of bail on the ground of parity since he is placed on better footing than the co-accused Abida whose disclosure statements reflects that she was the one who instigated the main accused Atif s/o Iftikhar Ahmed and Anas Khan, however, she has been released on bail by the Trial Court vide order dated 09.07.2024, hence present accused be also released on bail on the principle of parity.

3.4. She states that there is no criminal antecedent against the Applicant and as such there are no chances of the applicant for fleeing or tampering with any evidence if he is admitted to bail. She states that the Applicant is 28 years old, a resident of Delhi and otherwise gainfully employed. She states his prolonged incarceration during trial would cause immense harm.

3.5. She states that the Applicant has a small child and since the mother of the baby is suffering from TB, therefore, the child is dependent on Applicant for taking care of him by all means.

3.6. She further states that the Applicant undertakes to make himself available as and when directed by this Court or as required by the police officials /IO.

4. Mr. Khanna, learned APP for the State has opposed the bail application of the Applicant. He states that the Applicant is actively involved in commission of crime as he along with other accused persons provoked the co-accused Anas Khan to fire shots at Club with a common



intention. He states that though fortunately no one was injured by the shots; however, the glass of the building was hit by one of the shots.

4.1. He states that the accused cannot be released on the ground of principles of parity since the co-accused namely Adiba who has been released on bail is a 'lady'. Furthermore, it is pertinent to note that previously two bail applications of the present Applicant filed before the Trial Court have already been dismissed vide orders dated 21.09.2024 and 20.11.2024 respectively, besides that there has been no change in circumstances since the dismissal of said bail, which could evidence that the Applicant is not involved in commission of aforementioned offence.

4.2. He states that in the CCTV footage available with the IO, the Applicant is seen leaving the Club by entering the black Verna Car. He fairly states that in the CCTV footage of the incidence of firing, the Applicant cannot be seen. He states however it is the case of the prosecution the Applicant was sitting in the rear seat of the Car, when Anas Khan fired outside the Club. He states Abida, Atif Malik and Applicant/Atif Mohammed were sitting in the rear seat of the Car. He states Sohail was driving the Car and Anas Khan fired the shots.

4.3. He states if the present accused is released on bail there are chances that he may cause threat to the complainant and witnesses in the present case. He states that charges are yet to be framed.

5. This Court has heard the submission of the parties.

6. The accused has been in judicial custody for 06 months and 08 days as on 01.01.2025. He has no prior criminal antecedents and is 28 years old. The Nominal Roll records that his conduct in the jail has been satisfactory.

7. It is a matter of record that the co-accused namely Adiba has been



released on bail. The role of the Applicant at this stage is no different than the role of the other co-accused person i.e. Adiba who has been enlarged on bail, wherein both have been accused of provoking the co-accused i.e. Anas to fire at the club in furtherance of common intention. Except for the disclosure statement of the Applicant and the co-accused there is no independent evidence which places the Applicant at the scene of the incidence. The Applicant admittedly did not fire the pistol. The allegation of the prosecution that the Applicant and other co-accused acted in furtherance of common intention, while Anas Khan fired the pistol is a fact, which would have to be proved at trial.

8. Considering the aforesaid and the fact that the chargesheet in the present case already stands filed, this Court is of the opinion that no useful purpose will be served by keeping the applicant in judicial custody and the trial is likely to take a considerable amount of time, therefore, the Applicant cannot be made to spend the entire period of trial in custody.

9. In view of the aforesaid discussion, the Applicant has made out a prima facie case for grant of bail.

10. Thus, taking into account the overall facts and without commenting on the merits of the case, this Court is of the opinion that the Applicant ought to be enlarged on bail. The Applicant is, therefore, admitted to regular bail in FIR No.496/2024 registered at P.S. Karol Bagh and is directed to be released on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the learned Trial Court and subject to the following conditions:

(i) Applicant will not leave the country without prior permission of the Trial Court.



- (ii) Applicant shall provide its permanent address to the Trial Court. The Applicant shall intimate the said Court by way of an affidavit and to the IO regarding any change in residential address.
 - (iii) Applicant shall appear before the Trial Court as and when the matter is taken up for hearing.
 - (iv) Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
 - (v) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant or any member of the complainant's family.
 - (vi) The Applicant shall not threaten the witnesses or tamper with the evidence of the case.
 - (vii) The Applicant shall report at P.S. Karol Bagh once in a month, i.e., on the 1st of every month at 04:00 PM and the concerned officer is directed to release him by 04:30 PM after recording his presence and completion of all formalities.
11. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of delay.
12. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.
13. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
14. Accordingly, the petition is disposed of. Pending applications (if any)



are disposed of as infructuous.

15. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

JANUARY 28, 2025/MS/hp