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

+ BAIL APPLN. 4027/2023

SONU@SAM

..... Petitioner

Through: Mr. Himanshu Singh Shaktawat,
Advocate

versus

THE STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Shubhi Gupta, APP for State with
Insp. Vikas, PS Mukherjee Nagar.

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+ BAIL APPLN. 112/2024

RAHUL @ GANNI

..... Petitioner

Through: Ms. Sakshi Sachdeva and Ms. Ritika
Rajput, Advocates

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Richa Dhawan, APP for State
with Insp. Vikas, PS Mukherjee Nagar.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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22.03.2024

1. BAIL APPLN. 4027/2023 is an application seeking regular bail on behalf of the Applicant Sonu @ Sam S/o Sh. Subhash under Section 439 Cr.P.C. in case FIR No. 566/2018 dated 11.10.2018 under Section 302 IPC, registered at PS: Mukherjee Nagar, Delhi. BAIL APPLN. 112/2024 is an application seeking regular bail on behalf of the Applicant Rahul @ Ganni S/o Late Sh. Rakesh Kumar under Section 439 Cr.P.C. in case FIR No.



566/2018 dated 11.10.2018 under Section 302 IPC, registered at PS: Mukherjee Nagar, Delhi. Sections 307/120B/109 IPC read with Sections 114/115 IPC were subsequently added along with Sections 25 and 27 of the Arms Act, 1959. On account of similitude of facts and common legal issues, both applications were heard together and are being decided by this common order.

2. Case of the prosecution is that on 10.10.2018 at about 09:40 PM, a PCR call was received in police station Mukherjee Nagar vide DD No. 64A regarding someone firing a gun on a person near Dheerpur, Sisodia Tent House. On receipt of the call, the concerned team reached at the spot where it was learnt that the injured had been taken to BJRM Hospital, Jahangir Puri and on reaching the hospital, SI Prempal collected the MLC of Shyam Sunder who had received the gunshot and was declared dead during treatment. The place of occurrence was inspected and photographed by the Crime Team. One live cartridge and one fire cartridge were seized through a seizure memo. No eye witness was found in the hospital or at the spot. On the basis of DD entry and MLC, present FIR was registered under Section 302 IPC and investigation was initiated. Postmortem of the dead body was conducted and exhibits handed over by the Autopsy Surgeon were also seized through seizure memo. During investigation, it was learnt that Parvesh @ Bholu was the eye witness, whose statement was thereafter recorded under Section 161 Cr.P.C. and he stated that Rahul @ Khera, Rahul @ Ganni and Sonu @ Sam were previously known to him and on his statement, Applicants along with other co-accused were arrested on 12.10.2018 and Sections 307/120B IPC and Sections 25/27 of the Arms Act were added.



3. It is stated in the status reports that disclosure statements of the Applicants were recorded wherein they disclosed that they knew one Pramod @ Pahlwan, resident of Hardev Nagar, Burari, Delhi. Rahul @ Ganni had to recover Rs.2.5 lacs from Parvesh and he had demanded the money from him several times but to no avail. In September, 2018, Rahul @ Ganni along with friends of Pramod @ Pahlwan namely, Kamlesh, Sonu and Rahul @ Khera went to the house of Parvesh and threatened him of dire consequences but he did not return the money. On 10.10.2018, they all met at Bhagwan Park, Burari and planned to commit the crime and as per the plan, they were to go to the house of Parvesh and if he still refused to repay the money, he would be eliminated. Rahul @ Ganni and Pramod shall not be present at the spot. According to the planning, Rahul @ Khera, Kamlesh and Sonu went to Parvesh's house and asked for money. Meanwhile, heated arguments started followed by a scuffle and the deceased who was standing nearby intervened to stop the quarrel and the shot fired by Rahul @ Khera abetted by Pramod hit him and he subsequently succumbed to the injuries. Investigation revealed that the motor cycle APCHE used by the Applicants on the day of the incident was handed over by Rahul @ Ganni to Sonu and both along with Kamlesh came on this motorcycle for committing the crime. Exhibits were sent to FSL, Rohini for ballistic opinion. CAF and CDRs of the mobile phones were obtained which showed that the accused persons were speaking to each other on the date of the incident and were present at the place of occurrence at the time of committing the offence. Ballistic opinion indicates that the deformed bullet was discharged from the recovered weapon. The case before the Trial Court is at the stage of prosecution evidence.

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4. Learned counsel for the Applicant submits that Applicant is innocent and has been falsely implicated. He has never been involved in any offence in the past and has clean antecedents and deep roots in the society. Applicant was arrested in a false case on 12.10.2018 and remanded to police custody and has been languishing in judicial custody since 15.10.2018. Applicant was granted benefit of interim bail by this Court vide order dated 05.09.2023 for 11 days which was further extended for 18 days on medical ground of his father and he never misused the liberty granted by the Court. Material witnesses including the alleged eye witness have been examined and only those witnesses remain to be examined which have not stated anything against the Applicant in their statement under Section 161 Cr.P.C. or the formal police officials. Over 15 witnesses remain to be examined and the trial is not likely to conclude soon. Once material witnesses have been examined, there is no likelihood of tampering, threatening or intimidating the witnesses. The Supreme Court in *Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694* has observed that personal liberty of an individual is a precious fundamental right and should not be curtailed unless it is imperative in the given facts and circumstances.

5. It is further stated that PW-7, the Complainant and alleged eye witness has turned hostile and has not supported the prosecution story and did not identify the Applicants. In his cross-examination, PW-7 deposed that 7-8 persons started abusing him with an intent to assault and he attempted to pacify them but to no avail. One of the persons pulled out country made pistol and fired in the air upon which he ran inside his *dadi's* house. While he was inside, he heard another sound of the fire shot and the noise of the



neighbours who were shouting 'goli chal gyi, goli chal gyi'. When he came out of the house, he saw one person was lying on the ground hit by the fire shot. PW-7 further deposed that he was kept in the police station for one day and relieved the next day. He can identify those 7-8 persons who were abusing him and intended to assault. On a question being put to the witness, he looked around in the Court and stated that none of those present (which included the Applicants) were the ones who abused him and intended to assault him or pulled out a country-made pistol.

6. It is urged that the entire case is based on circumstantial evidence. Neither the weapon of the murder nor any other incriminating material was recovered from the present Applicant and no link has been established between him and the alleged crime apart from the fact that no motive has been attributed to him. Reliance on the CDR records by the prosecution is wholly misplaced. Applicant was only connected to Pramod and prosecution has failed to prove that the phone of co-accused Pramod was used at the time of the incident. There is no call record or transcript that incriminates the Applicant and as regards the location, Applicant lives near the place of incident and it is only natural that his location was found near the place of his residence. In any case, mere telephonic conversation with a co-accused is not incriminating evidence and CDR records would be tested during trial, as observed in *Saloni Arora v. State, 2009 SCC OnLine Del 1669*. In *Azad v. State of GNCT of Delhi and Another, 2023 SCC OnLine Del 1769*, this Court has held that CDR can only be used to corroborate any other evidence and cannot be the sole basis for conviction.

7. It is argued that speedy trial is guaranteed to an accused under the Constitution of India and it would be unfair if Applicant continues under



incarceration awaiting the conclusion of trial which is going to take years from now looking at the number of witnesses remaining to be examined on behalf of the prosecution. In *Mukesh Kumar v. State of Rajasthan and Anr., Special Leave to Appeal (Crl.) No. 11714/2022, decided on 15.02.2023*, the Supreme Court granted bail to the Petitioner on the ground that he had been in custody for more than 14 months and since crucial witnesses had been examined, there was no likelihood of tampering with evidence. No doubt, the allegations are serious but these are mere allegations and at this stage, presumption of innocence attaches to the accused. In *Prabhakar Tewari v. State of Uttar Pradesh and Another, (2020) 11 SCC 648*, the Supreme Court held that seriousness of allegations cannot be the sole factor to deny bail to an accused. The same view was taken by this Court in *Navendu Babbar v. State of NCT of Delhi, 2020 SCC OnLine Del 2345*, where it was observed that the offence is no doubt grave and serious but that cannot by itself be a factor to decline bail.

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8. Counsel for the Applicant adopts the arguments canvassed in BAIL APPLN. 4027/2023 and reiterates that Applicant has been in custody for over 06 years now. Material witnesses have been examined and the alleged eye witness PW-7 has not supported the case of the prosecution. Additionally, it is urged that the Applicant is innocent and has been falsely implicated. Going by the prosecution case, no motive is attached to the Applicant, as Parvesh had never borrowed any money from him. PW-7 in his examination on 20.02.2020 deposed that he did not know the Applicant and had never borrowed any money from him and in fact, had failed to identify the Applicant. In *Sumer Singh v. State, 2007 SCC OnLine Del*



1189, this Court has held that at the time of considering a bail application, the Court can take a bird's eye view of the testimony of the witnesses. Applicant is not alleged to have fired the shot or assaulted and no recovery has been made from him including that of the alleged weapon of crime.

9. It is argued that allegations of conspiracy are made against the Applicant and much emphasis is laid on the Applicant using a mobile number which was in the name of his deceased father. However, testimony of PW-14 makes it clear that Applicant was never using the said phone and therefore reliance on CDR details of the cell phone is misconceived. In *Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40*, the Supreme Court observed that object of bail is to secure appearance of the accused person at his trial and to receive punishment if convicted and is neither punitive nor preventive. Applicant has deep roots in the society and has not committed any offence in the past. He has been released on interim bail on 03 occasions and did not misuse the liberty granted. Jail conduct of the Applicant is 'satisfactory' and therefore he be released on bail subject to any conditions that this Court may impose.

10. *Per contra*, learned APP argues on the line of status report and submits that the offences against the Applicants are grave and serious. There was a clear motive to commit the crime as Rahul @ Ganni had given money to Parvesh, which he was not returning back despite repeated demands. A conspiracy was hatched between the Applicants and co-accused in furtherance of which they reached the house of Parvesh with an intent to kill him if he did not repay the money. Gun shot was fired by Rahul @ Khera *albeit* the same accidentally hit the deceased who was a bread seller in the neighbourhood. Ballistic report shows that the fire bullet was discharged



from the recovered weapon. CDRs of the mobile phones of the co-accused persons reveal that they were present at the place of occurrence at the time of the commission of offence. Long period of incarceration cannot itself be a reason to grant bail in a grave and heinous offence and it is likely that once released on bail, the Applicants may commit the crime again.

11. Heard learned counsels for the Applicants and APP for the State.

12. There can be no debate on the legal proposition that evidentiary value of testimonies of witnesses or their credibility is a matter of trial and equally settled is the proposition that while granting bail the discretion has to be exercised in a judicious manner and not as a matter of course. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias pappu yadav and Another, (2004) 7 SCC 528***, the Supreme Court observed that though at the stage of granting bail detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to undertake an exercise of looking into the circumstances and factors such as nature of accusation, severity of punishment in case of conviction, nature of supporting evidence, reasonable apprehension of tampering with evidence or apprehension of threat to the complainant and *prima facie* satisfaction of the Court, in support of the charge. In this backdrop and only for the limited purpose of deciding this application, Court has looked into the testimony of PW-7, Parvesh, the alleged eye witness. PW-7 stated that while he was sitting outside the house of his *dadi* on 10.10.2018 at about 09:00PM, 4-5 boys residents of his village came under the influence of liquor and started abusing loudly, to which he objected. They had come with an intent to assault the witness and therefore, an attempt was made by PW-7 to pacify them. However, they did not stop quarrelling and in the meantime, one of



the persons pulled out a country-made pistol and fired in the air. Seeing this, PW-7 went inside the house of his *dadi* and thereafter heard one more sound of fire shot and heard noises of neighbour shouting '*goli chal gyi, goli chal gyi*'. When he came out, he saw one person lying on the ground hit by a gun shot and came to know that the injured was a bread seller in the locality. During further examination, however, PW-7 on a pointed question stated that none of the 7-8 persons present in Court, which included the Applicants were the ones who had abused him or intended to assault or had pulled out a country-made pistol. Therefore, *prima facie* the only eye witness has not supported the case of the prosecution.

13. In *Sumer Singh (supra)*, this Court observed that no doubt at the stage of bail, Court is not required to threadbare examine the testimony of the witnesses but that would not mean that the Court is prohibited from taking a bird's eye view of the testimony of the witnesses. Consistency or inconsistency in evidence must await trial but where prosecution case appears to be weakening, justifying grant of bail, limited exercise of *prima facie* evaluating the evidence can be carried out by the Court. In the said case, two out of three eye witnesses of the prosecution had turned hostile. Considering the age of the Petitioner therein and the fact that all eye witnesses have been examined, Court released the Petitioner on bail.

14. No doubt, the allegations against the Applicants are serious but there is merit in the contention that the Applicants have been incarcerated since 15.10.2018. In *Prabhakar Tewari (supra)*, the Supreme Court has held that gravity of the offence cannot be the sole basis for denial of bail. In *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and Others, (1994) 6 SCC 731*, the Supreme Court held that



undertrials cannot be detained in jail indefinitely pending trial. In ***State of Rajasthan, Jaipur v. Balchand alias Baliay, (1977) 4 SCC 308***, the Supreme Court held as under :-

“2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.”

15. In ***Puneet Rana v. State NCT of Delhi, SLP (Crl.) No. 1882/2022***, decided on 19.05.2022, the Supreme Court granted bail to the Petitioner charged for offences punishable under Sections 302/356/379/323/506/34 IPC looking to the fact that material witnesses had been examined and 23 more witnesses were remaining to be examined and there was no likelihood of trial being completed soon. In ***Praveen Rathore v. State of Rajasthan and Another, 2023 SCC OnLine SC 1268***, the Supreme Court granted bail to the accused charged under Sections 302/120B IPC considering the long custody of four and half years and the possibility that the trial was not likely to conclude soon and relevant passage is as follows:-

“5. It is not in dispute that the petitioner, by now, has undergone more than four and a half years' of sentence. The prosecution intends to examine 76 witnesses, out of whom 53 have already deposed. All the crucial witnesses have already been examined. The instant case was adjourned on few occasions to enable the prosecution to examine Chauthmal Kashyap and Manohar Rathore, who were stated to be the vital witnesses. Their deposition is also complete.”

16. In ***Sanjay Chandra (supra)***, the Supreme Court observed as under:-

21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused



person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

17. Much emphasis was laid on the CDR analysis and the ballistic report. The recovery of the weapon is not from the Applicants and nor are the allegations of firing against any one of them. As pointed out by counsels for the Applicants and rightly so, CDR analysis cannot be the sole basis to convict an accused and will be tested during trial. Nominal roll indicates that Applicants have been in judicial custody since 15.10.2018 and have no other cases pending against them. Both Applicants were released on interim bail but have not misused the liberty granted. Since material witnesses stand examined, there is no possibility of Applicants tampering and/or threatening the witnesses. Looking at the number of witnesses remaining to be examined, which are even otherwise formal in nature, trial is not likely to conclude soon. Looking at the overall facts and circumstances and without



adverting and going into the merits of the case, this Court is of the opinion that Applicants have made out a case for grant of regular bail. Accordingly, applications are allowed and Applicants are directed to be released on bail upon furnishing personal bonds in the sum of Rs.50,000/- each with two sureties of the like amount each to the satisfaction of the Trial Court, of which one surety each will be by persons who are permanent residents of Delhi. Release on bail will be further subject to the following conditions:-

- i. Applicants shall not leave the country without prior permission of the Trial Court;
- ii. They shall provide their mobile numbers to the IO concerned and keep the same active at all times and shall not change the numbers without prior intimation to the IO and the Trial Court;
- iii. They shall furnish their permanent residential addresses to the concerned IO and shall intimate the IO as well as the Trial Court by filing affidavits regarding any change in their residential addresses;
- iv. They shall appear before the Trial Court as and when the matter is taken up for hearing;
- v. They shall not indulge in any criminal activity or communicate with or come in contact directly or indirectly with any prosecution witness; and
- vi. Applicants shall report to the IO on every third Monday at 11:00 AM.

18. Needless to state that any observation in the present order will not tantamount to expression of opinion on the merits of the case.



19. Bail Applications stand disposed of.
20. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

MARCH 22, 2024

B.S. Rohella/shivam