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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3007/2023

AIZAZ @ PATILA

..... Petitioner

Through: Mr. Aditya Aggarwal and Mr. Naveen
Panwar, Advocates.

versus

STATE

..... Respondent

Through: Ms. Richa Dhawan, APP for the State
with SI Rahul PS Seelampur.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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15.09.2023

1. The present petition has been filed under Section 439 Cr. P. C. seeking regular bail in FIR No. 582/2017 under Sections 302/120-B/34 IPC read with Sections 25/27 of the Arms Act registered at PS Seelampur.
2. The learned counsel for the petitioner submits that the case of the prosecution is that the deceased Ranjit got a bullet injury and died on account of the same. The present petitioner is one of the three accused persons who are attributed with the injury caused to the deceased.
3. The learned counsel for the petitioner submits that the prosecution has cited only two public witnesses namely Pawan Kumar, who was examined as PW-5, and Kanhiya, who was examined as PW-15. Inviting attention of the Court to the testimony of PW-5 (Pawan Kumar), the learned counsel submits that the said witness has clearly stated that he could not see the faces of accused Aizaz @ Patila (petitioner herein) and Faisal. In his cross-examination, he also testified that it is correct that he had not seen accused Aizaz @ Patila and Faisal at the spot at the time of incident.



4. In so far as the testimony of Kanhiya (PW-15) is concerned, he has only stated that at the time of incident he saw three accused persons running towards GT Road and it is the accused Afzal who was carrying a *katta* in his right hand at that time.

5. In view of the above, the learned counsel submits that from the testimony of PW-15, it is clear that the co-accused Afzal was carrying a *katta* in his right hand, therefore, the gun shot injury cannot be attributed to him.

6. He further submits that the petitioner was arrested on 18.09.2017. However, he was released for a period of two years in terms of the HPC guidelines. He submits that the liberty so granted to him was not misused by the petitioner.

7. He further contends that the petitioner has clean antecedents.

8. *Per contra*, it has been argued by the learned APP that the eye witness PW-15 has identified all the three persons including the present petitioner standing outside the shop. She submits that PW-5, Pawan Kumar has given a complete account of the incident. She further submits that the statements of all the witnesses are corroborated by each other.

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

10. This court is cognizant of the fact that the testimonies of the eye-witnesses recorded during the trial, cannot be sifted in detail at this stage. However, for the limited purpose of deciding the bail application, the testimonies of the eye-witnesses are being referred to.

11. It appears that one of the eye witness PW-5, Pawan Kumar, in his cross-examination has stated that it was dark and he did not see the face of



accused Faisal and Aizaz @ Patila, the petitioner herein. In so far as another eye witness i.e., PW-15, Kanhiya is concerned, he has stated that it was co-accused Afzal who was carrying a *katta* in his hand. He has not attributed the sole gun shot injury suffered by the deceased to the present petitioner.

12. The prosecution has cited 42 witnesses including the aforesaid two eye witnesses. The said two eye witnesses have already been examined. Since the material witnesses have been examined, there is no question of petitioner influencing the material witnesses.

13. There is long list of other formal witnesses, who are yet to be examined, therefore, the conclusion of trial is likely to take long time.

14. The petitioner is in custody since 18.09.2017, except for the period he was on interim bail in terms of the recommendations of the HPC guidelines. Further, it is not in dispute that the petitioner did not misuse the liberty when he was enlarged on interim bail. Therefore, there is no possibility of the petitioner fleeing from justice.

15. The case is at the stage of trial and the custody of the petitioner is no more required, therefore, keeping the petitioner in custody will not serve any useful purpose.

16. On a query put by the court, the learned APP, on instructions from the IO, states that the petitioner had been implicated in only one other case i.e. FIR No. 534/2022 registered at PS Seelampur under section 308 IPC. It is not in dispute that the petitioner is on regular bail in that particular case vide order dated 06.01.2023 passed by the learned Additional Sessions Judge-01, Karkardooma Court, Delhi (**Annexure P-11**).

17. Considering the aforesaid facts, I am of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is



admitted to regular bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court / Jail Superintendent/Duty Magistrate, further subject to the following conditions:-

- i) Petitioner/applicant will not leave the city without prior permission of the Court.
- ii) Petitioner/applicant shall appear before the Court as and when the matter is taken up for hearing.
- iii) Petitioner/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 Investigating Officer concerned.
- iv) Petitioner/applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the, witnesses or any family members of the witnesses.

18. The petition is disposed of.

19. Nothing stated herein above shall be construed to be an expression of an opinion on the merits of the case.

20. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

21. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

SEPTEMBER 15, 2023/akc