



2025:DHC:3365



\$~2

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

%

Date of Decision: 06.05.2025

+ **BAIL APPLN. 357/2025**

SUJEET

.....Petitioner

Through: Mr. Nischal Kumar Neeraj, Mr. D.K. Pathak, Mr. Praveen Mishra and Mr. Sanat Pandey, Advocates

versus

STATE GOVT NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for State with Inspector Bijender, PS Bindapur and Inspector Rajpal, Paschim Vihar Mr. Varun Rana, Advocate for complainant *de facto*

CORAM: JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

1. The accused/applicant suffering incarceration for the past two and a half years seeks to be released on bail in case FIR No. 718/2022 of PS Bindapur, Delhi for offence under Sections 302/120B/393/397/34 IPC & 25/27 of the Arms Act.



2. I have heard learned counsel for accused/applicant, learned counsel for complainant *de facto* and learned APP assisted by Investigating Officer/Insp. Rajpal.

3. Briefly stated, prosecution case is as follows. On the night intervening 09.10.2022 and 10.10.2022, DD No. 7 and 8 were recorded at PS Bindapur regarding firing incident at Manas Kunj, Uttam Nagar, Delhi. By way of DD No. 14A, an information was received from the hospital that an injured person namely Mohit Arora was brought dead on account of a gunshot injury. The crime team visited the spot and found one bullet lead, a motorcycle, a scooty and blood stains, all of which were collected and seized. Statement of Mr. Rohit Arora, brother of the deceased was recorded, who stated that on the fateful night, he along with the deceased were going home from their shop of ladies garments and when they reached near home, two persons came from the opposite direction on motorcycle and tried to stop them; that one of the motorcycle-borne persons tried to snatch the money bag, after which both the brothers fell down from their scooty and tried to run away but were followed by the assailants, leaving behind their motorbike and after some distance, one of the assailants fired at the deceased. The entire incident was captured on CCTV. The accused persons namely Satender and Mohd. Faizan on their arrest were interrogated and they disclosed that it is the present accused/applicant who had tipped them off that the deceased would be carrying huge amount of money. On the basis of the said disclosure statement, the accused/applicant was arrested.



4. Learned counsel for accused/applicant contends that it is a fit case for grant of bail because there is no evidence to connect the accused/applicant with the murder of the deceased.

5. On the other hand, learned Prosecutor strongly opposes the bail application, contending that gravity of the offence has to be kept in mind. Learned Prosecutor on instructions of the Investigating Officer submits that as regards the conspiracy to commit robbery and murder, Call Detail Records obtained by the Investigating Officer reflect telephonic connectivity between the accused Satender and the present accused/applicant. It is submitted that the accused/applicant was employed in the shop of the deceased, so he was aware about the vulnerability of the deceased. It is further submitted that Ajeet, brother of the accused/applicant was also found in the vicinity near the spot of occurrence at the time of the alleged incident.

6. Learned counsel for complainant *de facto* strongly opposes the bail application and submits that at least eyewitness Rohit be first allowed to be completely examined.

7. So far as testimony of Rohit is concerned, he is the alleged eyewitness who was accompanying his brother, the deceased at the time of the alleged incident. Rohit is an eyewitness of only the alleged firing incident and not any other fact, including the alleged conspiracy between the main assailants



Satender, Faizan and the accused/applicant. Before the predecessor bench, the matter was adjourned twice, awaiting the testimony of Rohit but the same remains yet to be concluded.

8. Indeed, gravity of the offence is certainly a vital factor while considering a bail application. But that is not the only factor to be kept in mind. The Court also has to be conscious about some *prima facie* evidence/material connecting the accused/applicant with the alleged offence. As reflected from previous record, according to prosecution, the only evidence connecting the accused/applicant with conspiracy to commit robbery and murder is his telephonic connectivity with the co-accused Satender. But even that connectivity according to prosecution is only a single phone call, that too about seven hours prior to the alleged incident.

9. Most importantly, despite spending substantial time flipping through the investigation file, the Investigating Officer could not show the Customer Application Form (CAF) to show that the phone call relied upon by prosecution side involved telephones owned by both Satender and the accused/applicant or either of them. The Investigating Officer, after not being able to show CAF of either the phone allegedly belonging to Satender or the phone allegedly belonging to the accused/applicant, submitted that he had collected the CAF but is not carrying the same in the investigation file. But even the list of documents in the chargesheet does not make any mention of the alleged CAF, which shows that CAF was never collected by



the Investigating Officer. That being so, it cannot be ascertain *prima facie* if the telephone call relied upon by prosecution was between the accused Satender and the present accused/applicant.

10. In other words, even according to prosecution case, a single phone call is the only evidence of conspiracy between the accused/applicant and the assailants on the spot; but even that phone call cannot be connected with the accused/applicant and/or either of the assailants. *Prima facie*, as on date there is no reliable evidence of conspiracy against the accused/applicant.

11. However, I must add a cautious rider that the above discussion is for the limited purposes of ascertaining as to whether liberty of the accused/applicant, who is suffering incarceration for the past two and a half years be further curtailed. The learned trial court shall take final decision on trial without getting influenced by the above discussion.

12. Considering the above circumstances, the bail application is allowed and the accused/applicant is directed to be released on bail subject to his furnishing personal bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of the Trial Court.

13. At request of learned Prosecutor, it is specifically directed that the accused/applicant shall in no manner try to contact any of the family members of the deceased and any of the witnesses of the prosecution, otherwise the bail shall be cancelled. Further, as requested by learned



2025:DHC:3365



counsel for complainant *de facto*, expressing apprehension of the complainant *de facto*, it is also directed that the accused/applicant shall not visit the area of Manas Kunj, Uttam Nagar for any purpose whatsoever.

14. A copy of this order be immediately transmitted to the concerned Jail Superintendent for informing the accused/applicant.

MAY 06, 2025

'rs'

GIRISH KATHPALIA, J