

Nadeem vs The State (Gnct Of Delhi) on 21 May, 2021

Author: Rajnish Bhatnagar

Bench: Rajnish Bhatnagar

(VIA VIDEO-CONFERENCING)

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 913/2021

NADEEM

Through: Mr. Vijay Kinger, Advoc

versus

THE STATE (GNCT OF DELHI)

Through: Ms. Rajni Gupta, APP fo

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

% 21.05.2021

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 264/2018 under Sections 302/109/34 IPC and Section 25 & 27 of the Arms Act registered at Police Station Seelampur, Delhi.

2. Briefly stated, the facts of the case are that on 13.08.18 a PCR call vide GD No-53B was received at PS Seelampur in which caller stated regarding gunshot firing near Brahmpuri Pulia, Gautampuri, Delhi. The said call was entrusted to ASI Khagnesh who along with Ct. Nitin No-1959/NE reached at spot where no eyewitness was found. On enquiry it was revealed that quarrel was taking place near Jhuggi's E-block, Seelampur, Delhi. Subsequently an information vide GD No-58B was received in which caller stated that a lady had sustained bullet injuries on which ASI Khagnesh along with Ct Nitin reached at spot E-15/C-11, New Seelampur, Delhi where blood was present in the balcony of second floor and injured was shifted to JPC hospital Shastri Park where ASI Khagnesh collected the MLC No- 17791/18 of Sana w/o Iqbal R/o C1/1, Near Central Bank Seelampur having alleged history of fall from height on 13.08.2018, Nasal Bleed+laceration over fore head 2*0.5 and patient was referred to GTB Hospital.

3. For further investigation, call was marked to SI Naveen. SI Naveen reached at spot E-15/C-11, New Seelampur, Delhi where Ct. Nitin stated him that ASI Khagnesh had went to JPC hospital. On further enquiry SI Naveen reached at GTB hospital where patient was found under treatment and unfit for statement. As no eye witness was found at the spot and in hospital, therefore, the case was registered U/s 308 IPC on the basis of GD entry by IO. On 14.08.2018, CT scan report of victim was collected in which Dr. opined that victim sustained bullet injuries in her head and on the same night victim succumbed to her injuries.

4. During investigation, on 14.08.18 Md. Iqbal (husband of victim) came at PS and made his statement in which he stated that on 13.08.18 he was present at his factory situated at ground floor of his house and the quarrel was taking place outside the house between the family members of Chand and Mehzabi @ Sukkhi. Son of Chand namely Masoom Ali @ Mehtab @ Raju and his relative Nadeem were standing near Chand's house and family members of Mehzabi @ Sukhi were standing in front of victim's house.

Family members of both families were pelting stones on one another. Meanwhile Masoom Ali asked Nadeem to fire with pistol on other party. Nadeem put the face of pistol towards other party and fired 2-3 rounds of bullets. After that all fled from there. After some time when he went on the second floor of the house, he saw that his wife Sana lying in the balcony and blood was oozing out from her head. He took her to JPC hospital from where she was referred to GTB hospital where she succumbed to her injuries.

5. I have heard the Ld. counsel for the petitioner and Ld. APP for the State and perused the material available on record.

6. It is submitted by the Ld. counsel for the petitioner that the petitioner has been falsely implicated in the present case. He further submitted that the name of the applicant has not appeared in the FIR. He further submitted that in the first MLC of the victim, the alleged history of assault is mentioned as fall from height which shows that there was no eye witness of the case and particularly the husband namely Iqbal has not witnessed the incident. He further submitted that the witnesses are planted witnesses. He further submitted that the police has filed the false charge sheet as the distance from where alleged fire of bullet has been shown is around 150 to 200 meters from the place where Sana was standing but the police official have deliberately shown the said distance as 50 meter, which is beyond the range of the alleged weapon used.

7. It is further submitted by the counsel for the petitioner that the footage seized by the police does not reflect alleged eye witness who claimed to be present at the time of firing behind the co-accused which shows that the FIR has been falsely registered. It is further submitted by the Ld. counsel for the petitioner that if Iqbal (husband of the victim) witnessed the incident at around 6:15 p.m then why he went at his home at around 7- 7:15 p.m. to take his wife to hospital.

8. It is further submitted by the Ld. counsel for the petitioner that 17 witnesses have been examined including the eye witness but nothing incriminating has come against the petitioner. He further submitted that further trial will take long time. He further submitted that due to Pandemic

situation, it is still uncertain that when the normal work will resume. He further submitted that father of the applicant/petitioner expired during the pendency of trial and there is nobody else to look after the family members except the petitioner as he is the elder male member in his family.

9. On the other hand, while opposing the bail application, it is submitted by the Ld. APP for the State that the allegations against the petitioner are grave and serious in nature. She further submitted that no doubt, 17 witnesses have been examined, but still there are some important witnesses who are yet to be examined. She further submitted that one important eye witness namely Shahbaz is yet to be examined, who in his statement U/s 161 Cr.P.C. has stated that he has witnessed the incident and has also described the role played by the petitioner during the incident. She further submitted that weapon used in the incident has been recovered from the applicant and the bullet recovered from the head of the victim has been opined by the Ballistic expert as discharged from the said weapon and the video clipping also indicates the presence of the applicant at the spot.

10. In the instant case, the allegations against the petitioner are grave and serious in nature. I have perused the testimonies of the witnesses recorded before the Trial Court and also perused the Status Report filed by the State. It is stated in the Status Report that as per ballistic report bullet recovered from the head of victim was discharged from the weapon used by the petitioner and the video clipping also clearly indicates the presence of the applicant at the spot. I have also perused the statement recorded U/s 161 Cr.P.C. of eye witness namely Shahbaz in which he has narrated as to in what manner the incident had taken place and the role of the present petitioner. PW Shahbaz is yet to be examined and the release of the petitioner/applicant at this stage can hamper the trial. Therefore, in these facts and circumstances and looking into the allegations against the petitioner which are grave and serious in nature, no ground for bail is made out, the bail application is, therefore, dismissed.

11. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J MAY 21, 2021 Sumant