

Mohd. Arif @ Kale vs State Of N.C.T. Of Delhi on 6 October, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 436/2023

MOHD. ARIF @ KALE

Through:

versus

STATE OF N.C.T. OF DELHI

Through: Ms. Meenakshi Dahiya

State with Insp.

Singh and Ganesh

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% 06.10.2023

1. The present application has been filed by the applicant under Section 439 of the Code of Criminal Procedure [Cr.P.C.] seeking regular bail in FIR No.77/2019 dated 21.07.2019 under Sections 302/307/120B/34 of the Indian Penal Code, 1860 [IPC] and Sections 27/54/59 of the Arms Act, 1959 at PS: I.P. Estate, Delhi.

2. As per the FIR, on 20.04.2019 at around 05:45 pm, when the complainant Pinki, along with one Deepak and one Gangesh Kumar, was returning towards her car after paying respects to their Guru at Mehdiyan graveyard, MAMC Campus, Delhi, two persons on a motorcycle stopped near their car and the pillion rider took out a gun and started firing shots at them. All the three persons were shot and on being taken to Lok Nayak This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/10/2023 at 22:32:56 Hospital, Gangesh Kumar was declared dead. The FIR was registered on the basis of the statement of the complainant that one Shalu, also a transgender, had a long standing enmity with her and she along with the applicant herein and one Shanker had threatened to kill her in the past and she suspected that the said firing attack was also done at the behest of said Shalu in connivance with the applicant.

3. During the course of investigation, the assailants were apprehended who disclosed that they had attacked the victims at the behest of the applicant, Shalu and Shankar. The applicant was arrested on 07.08.2019. After filing of the chargesheet on 18.07.2019, a supplementary chargesheet was also filed against the applicant. Thereafter, charges were framed. The trial is presently at the stage of

prosecution evidence.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case as he was neither present on the place of incident and since he is not a transgender, he has no connection, whatsoever with the fight for area domination or the coveted "Gaddi". He submits that due to the history of enmity between the co-accused and the complainant herein, the applicant was already apprehending that false cases might be filed against him and his sister had also made complaints to the police in this regard. He further submits that the applicant has been implicated only on the basis of the alleged recovery of weapon of offence from the applicant. However, the FSL report dated 22.9.2022, clearly indicates that the weapon recovered from the applicant was not used in the commission of the offence. He further states that the disclosure statements of the assailants implicating the applicant cannot be considered as the same have no evidentiary value. He also submits that the statement of one This is a digitally signed order.

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5. Further, relying upon the judgements passed in Mohd. Ayub v. State 282(2021) DLT 741, learned counsel for the applicant submits that the applicant has already been in judicial custody for almost 4 years and since only 3 out of 31 witnesses have been examined so far, the trial is likely to take time during which the applicant be not held behind bars. He lastly submits that the medical condition of the applicant is not good as he had to undergo heart surgery at AIIMS, a few months back.

6. Notice was issued and Status Report and Nominal Roll were called for. As per the Nominal Roll, the applicant has been in custody for almost 4 years and 2 months and he is involved in 3 other FIRs, also involving offences under the Arms Act, 1959 and under Sections 427 IPC, wherein he has been acquitted in one and is on bail in two others. He has also been previously convicted vide order dated 06.11.2006 in FIR 69/2001 under Section 25 of the Arms Act, 1959 wherein he has already undergone his sentence. The overall jail conduct of the applicant is satisfactory, although he has been punished on 26.10.2022 for possession of a prohibited article.

7. Learned APP for the State, relying upon the Status Report, opposes grant of bail to the applicant, submitting that the applicant is one of the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/10/2023 at 22:32:57 main conspirators of the alleged attack and he has played an active role in the commission of the offence as he was the one who arranged the contract killers and also provided them with the

information of the victims and also paid them money for attacking the victims. She further submits that he also conducted recce of the place of the incident. She also submits that the applicant had earlier absconded and Section 82 Cr.P.C. proceedings were also initiated against him. Learned APP further submits that previously also complaints had been filed against the applicant by the complainant as also the deceased alleging that the applicant has threatened to kill them. She submits that all material witnesses have not been examined and thus the applicant be not granted bail as there is every possibility that the applicant may tamper with evidence and influence the witnesses.

8. This Court has heard the learned counsel for the parties and has also perused the documents on record.

9. The facts involved reveal that the applicant was acting at the behest of/ in cohorts with the co-accused Shalu, who is the main accused, with whom he has been connected and residing with for a long period of time. The applicant, thus, allegedly has had a major role to play all throughout since the very inception as the allegations against him are that not only did he find and contact the contract killers but provided them with the requisite information qua the victims as well as also paid them money and also conducted recce of the place of the incident. There are CDR calls to that effect too. Besides that, there are numerous earlier complaints filed against the applicant by the very same complainant and also by the deceased with respect to the death threats given by him. Further, taking This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/10/2023 at 22:32:57 the above into consideration and also the fact that he was arrested subsequent to the initiation of Section 82 Cr.P.C. proceedings against him, in the opinion of this Court, when all the material witnesses are yet to be examined, it would be prudent for denying bail to the applicant as it might lead to chances of his tampering with the evidence and/ or influencing the witnesses. Granting bail to the applicant in the existing circumstances, in the opinion of this Court, can thus derail the trial and jeopardise the fate and outcome of the present FIR. In view thereof, this Court is reluctant in granting bail to the applicant.

10. In the facts and circumstances involved, the involvement of the applicant in other FIRs, and that too with the same complainant and others, in the opinion of this Court, are factors to be taken into consideration while granting bail to the applicant.

11. In any event, this Court, while granting bail to an accused, has to take into consideration the following factors laid down and further reiterated by the Hon'ble Supreme Court from time to time in *Prasanta Kumar Sarkar vs. Ashis Chatterjee* (2010) 14 SCC 496; *State of Uttar Pradesh vs. Amaramani Tripathi* (2005) 8 SCC 21; and *Deepak Yadav vs. State of Uttar Pradesh* (2022) 8 SCC 559 as under:-

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

- ii. nature and gravity of the accusation;
- iii. severity of the punishment in case of conviction;

iv. danger of the accused absconding or fleeing, if released on bail;

v. character, behaviour, means, position and standing of the accused;

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12. In the wake of all the above, the judgments cited by the learned counsel for the applicant are of little, if not any, assistance to the applicant as they are not relevant to the facts involved in the present FIR as in view of the aforesaid factual matrix involved and the settled position of law and keeping in mind the precautions to be taken while granting bail to any applicant involved in heinous offence(s) like the present one, this is not a fit case for grant of bail at this stage.

13. Accordingly, the bail application is dismissed.

14. Needless to mention, observations made, if any, on the merits of the matter are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J OCTOBER 6, 2023/So This is a digitally signed order.

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