

Mauzzam @ Zameel Vs State
SC No. 44777/2015

In re:-
FIR No. 548/2013
PS: Seelampur
U/s: 302/201/34 IPC & Sec. 25 Arms Act

21.11.2020

Present: Sh. Ritesh Bahri, Ld. Counsel for the applicant/accused.
Sh. Rakesh Kumar Mehta, Ld. Substitute Addl. PP for the State.
W/SI Esther Dazi Duo in person.

Further reply of the bail application received through email.
Submissions on the bail application heard.

It is submitted on behalf of applicant that the police officials in collusion and connivance of the complainant, deliberately and intentionally lodged a false case against the applicant and thereafter, arrested him on 13.01.2014 and since then he is in judicial custody. It is submitted that co-accused Zamal has been enlarged on bail by this court. It is submitted that the applicant is no more required for any custodial interrogation and that 26 witnesses out of 27 have been examined and the trial is at fag end. It is submitted that despite the police custody, no recovery was effected pursuant to the disclosure statement of the applicant, therefore, he may be released on bail. It is submitted that even according to the FIR, the applicant was not present at the time of initial dispute and the complainant in his detailed complaint has never stated as to whose alleged bullet hit the deceased. It is submitted that the complainant who is examined as PW-1 in the court has deposed that the incident occurred at night and there was not street

light and the applicant/accused present in the court did not commit any crime. It is submitted that the complainant has not supported the prosecution case hence there is every likelihood of acquittal of the applicant in the case. It is submitted that the witness who is examined as PW-2 is no more as such his testimony cannot be relied upon. It is submitted that other witness PW-4 Fahim has never stated the name of the person who was having pistol and whose bullet hit Jishan. It is submitted that PW-5 has also not supported the prosecution case and has stated that on the date of alleged incident there was darkness and there was no street light and he was not in a position to identify the accused. It is submitted that another witness namely Safdar has given a delayed statement to the police and he had not named any of the accused in the court. It is submitted that further trial proceeding is likely to be delayed on account of COVID-19 and on the ground of delaying trial, the applicant deserves to be released on bail. The Ld. Counsel is placing reliance on the cases of Ashok vs. State 2008 JCC (2) 487, Ved Prakash vs. State 2007 JCC (1) 1564, Manjeet Singh vs. State 2009 (2) JCC 977, Aman Gaur vs. State 2012 (1) JCC 415, Raneef vs. State of Kerela 2011 (1) SCC 784 and case of H. B. Chaturvedi vs. CBI in support of his application.

On the other hand, the bail is opposed by Ld. Addl. PP with the submissions that the witnesses examined during the trial have supported the case of the prosecution in their chief examinations and as the witnesses namely PW-1 and PW-5 have been approached by the accused, they have taken U-turn in their cross-examination. It is submitted that the remaining witnesses may also be approached or pressurized by the accused if he is admitted to bail. It is submitted that the case of the applicant is not similar to the case of co-accused Zamal who is admitted to bail as the case of the prosecution against accused Zamal was that at

the time of incident, he was not physically present at the place of incident. It is submitted that the applicant does not deserve the bail considering the gravity of the offence.

It is the settled proposition of law that at the time of dealing with the bail application, mini trial is not permissible and court is not required to go into depth while appreciating the evidence against the applicant. In the present case, the effect of contradictions in the testimony of witnesses and the effect of taking U-turn on the aspect of identity of the assailants in the cross-examination of complainant and PW-5 is to be dealt with upon completion of the trial. All the injured/eyewitnesses except one have been examined in the court. The court may impose the conditions upon the accused to ensure the fair trial and protecting the remaining witnesses.

Considering the submissions in the light of record available in the file, period of custody and that there is no likelihood of early trial due to pandemic situation, I am of the view that case is made out to admit the applicant Mauzzam @ Zameel on bail. However, it is made clear that if the applicant is found involved in approaching the witnesses of the case directly or indirectly then his bail will be cancelled and he will not be considered during the trial to be released on bail. The applicant be released from the custody on furnishing bail bond in a sum of Rs. 50,000/- alongwith one surety in the like amount. Application disposed off accordingly.

(SUNIL CHAUDHARY)
Special Judge (NDPS)/ASJ
North East/ Delhi 21.11.2020