

Hearing through Video Conferencing by Cisco Webex Meeting App

CNR No: DLNE01-000313-2014

IA No. 06/2021

Azhar Vs. State

In re:

SC No. 44777/2015

FIR No. 548/2013

PS: Seelampur

U/s: 302/207/120-B/34 IPC

& Sec. 25/27 Arms Act

19.01.2021

Present: Sh. Ritesh Bahri, Ld. Counsel for the applicant/accused.

Sh. Ashok Kumar, Ld. Addl. PP for the State.

Submissions on the bail application heard.

It is submitted that the applicant was arrested on 25.03.2014 and is in custody since then and time of more than six years and nine months have passed. It is submitted that the applicant is no more required for any custodial interrogation and deserves to be released on bail. It is submitted that prosecution has already examined 26 witnesses out of 27 witnesses and the trial is at fag end. It is submitted that despite police custody, no recovery was effected pursuant to the disclosure statement of the applicant. It is submitted that according to the FIR, there was initial dispute between the complainant and his relatives Rameez, Raja

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and with applicant Azhar and that the applicant was not present at that time. It is submitted that thereafter a meeting was held up and matter was compromised and the complainant in his detailed FIR has never stated as to whose alleged bullet hit the deceased.

It is submitted that complainant who is examined as PW-1 in the court has deposed that the incident occurred at night and there was no street light and the applicant/accused present in the court did not commit any crime. It is submitted that another eyewitness who is examined as PW-2 Mohd. Qamar is no more as such his testimony cannot be relied upon. It is submitted that other witness PW-4 Faem has never stated the name of the person who was having pistol and whose bullet hit Jishan. It is submitted that PW-5 Rameez 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 his statement u/s. 161 CrPC.

It is submitted that it is settled law that meticulous examination of witnesses is not required during the course of bail process. It is submitted that the applicant was enlarged on interim bail on account of marriage of his real sister vide order dt. 22.01.2018. It is submitted that further trial proceedings is likely to be delayed on account of COVID-19. It is submitted that co-accused Jamal and Mohd. Zameel have already enlarged on bail by the court and the applicant also deserves for same concession on the ground of parity. Ld. Counsel is placing reliance on the

cases of Ashok vs. State 2008 JCC (2) 487, 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, 2010 & R. Vasudevan Vs. CBI in Bail Application No. 572/2010 in support of his application.

On the other hand, the bail is opposed by Ld. Addl. PP with the submissions that the witnesses examined as PW-2, PW-4, PW-12, PW-13 and PW-14 during the trial have supported the case of the prosecution and that PW-1 and PW-5 initially supported the case of the prosecution but when their cross-examination was conducted and it was after a long time, they took U-turn from their earlier statement as they have been won over by the accused persons. It is submitted that one pistol and four live cartridges were recovered from the applicant and he is involved in four more cases. It is submitted that the if applicant is released on bail, he may threaten or influence the rest of the witnesses and may put pressure on the victim and his family.

In the rebuttal, it is submitted by the counsel for the applicant that the alleged pistol and cartridges were planted upon the applicant by the police and even the complainant in whose presence the recoverer was allegedly effected has denied the same during his testimony in the trial. It is submitted that only one case is pending for trial at present except the present case against the applicant and in the remaining three cases, applicant has been acquitted by the trial courts. It is submitted that no evidence is available with the prosecution that the bullet which hit the deceased was discharged from the weapon allegedly recovered from the applicant.

It is the settled proposition of law by catena of judgments 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 Azhar 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. Copy of order be sent to the parties.

(SUNIL CHAUDHARY)
Special Judge (NDPS)/ASJ/
North East/ Delhi 19.01.2021