

Bail Matter – IA/3/22
State Vs. Rohit @ Vishal
FIR No. - 842/20
PS : Uttam Nagar
U/s. 302/34 IPC

26.08.2022

Present: Sh. Yogendra Adari, Ld. APP for the State.

Sh. Varinder Singh Dhiman and Sh. Anuj Rajpal,

Id counsels for accused / applicant Mela @ Bijli.

Further arguments on bail application heard.

This is bail application filed under Section 439 Cr.P.C on behalf of the applicant/accused.

Reply filed to bail application.

Bail application is moved on the ground that the incident took place on 14.10.2020 and applicant herself called the police by dialing 100 and stated that some bullet shots were fired and in fact those shots were fired by the deceased Firoz and his friend namely Rahul. Both deceased and Rahul were carrying countrymade pistol and came to the house of the applicant and demanded money but the applicant refused on which the deceased fired. In self-defence, some force was applied by the applicant and her son due to which deceased namely Firoz Khan might have sustained superficial injuries. Mens rea is absent as all this happened in spur of a moment. Applicant was arrested on the same day on which she made call to police herself. Applicant, after the above-mentioned incident, co-operated with the IO at every stage of investigation. The applicant herein is a victim of the botched up investigation conducted by the police. The applicant has a strong case on merits, but trial may take some time. The present case

is a speculative case with no independent unbiased eye-witnesses. The Statement of alleged eye-witnesses recorded by the IO are same in verbatim and the narration given by the eye-witness in a parrot like manner. The deceased was a gangster and was having various FIRs registered against him. The deceased was to extort money from people belonging to lower strata of society.

Counsel for the accused further submitted that allegation against the applicant / accused are that she exhorted her son to pick up axe and to kill the deceased and also that she threw stones on the deceased. But during investigation, no stone was recovered from the spot and no blood was either found on the ground despite the fact that PCR reached the spot within 7 minutes of the call made by the applicant. Further, no seizure of Earth Control, Earth Control with Blood or Blood in Gauze was done by the IO. So, the only case against the applicant / accused was that she gave exhortion and allegation of exhortion is made just to rope in the accused/applicant and file judgments in case titled **“Balwantbhai B. Patel vs. State of Gujarat and Ors” in Criminal Appeal No.45 of 2004 decided on 09.09.2009** & **“Jainul Haque vs State of Bihar” Criminal Appeal No. 82 of 1970 decided on 15.10.1973** passed by Hon'ble Supreme Court of India and **“Jawahar Singh Vs State” in Cr. M(M) 727 of 1985 decided on 06.08.1985 by Hon'ble High Court of Delhi.**

It is also submitted that accused has been falsely implicated in the present FIR, allegations are false, investigations qua the accused is complete, accused is ready and willing to abide by all the conditions and is already out on interim bail since 06/12/2021. The conduct of the

applicant while inside the jail as well as when out of interim bail has been satisfactory and there is no reason to doubt that the applicant will not attend the trial regularly if regular bail is granted to her. The applicant will abide by every direction of the court and shall not make any inducement, threat or promise to any person.

Ld. APP for the state oppose the bail application on the ground of gravity of offence and on the ground that applicant has been named by the eyewitnesses in their statement. Ld. APP further stated that if applicant is admitted on regular bail she may make inducement to the witnesses and there is also chances that she may abscond.

Application alongwith its reply and charge-sheet perused.

The main allegation against the accused applicant are that she threw stones on the deceased but no stone was recovered from the spot despite the fact the police team reach the spot within 7 minutes of the incident and both the parties were present at the spot. The other allegation qua the accused applicant is that of exhortation. In **“Jainul Haque vs State of Bihar” Criminal Appeal No. 82 of 1970 decided on 15.10.1973** it was held by Hon'ble Supreme Court of India that *“the evidence of exhortation is, in the very nature of things, as weak piece of evidence. There is quite often a tendency to implicate some person in addition to the actual assailant, by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant”*. Further, in **“Balwantbhai B. Patel vs. State of Gujarat and Ors” in Criminal Appeal No.45 of 2004 decided on**

09.09.2009, it was held by Hon'ble Supreme Court of India that “*We are also not unmindful of the fact that allegations of catching hold of an attack victim or of an exhortation are invariably made when the number of injuries on the injured party do not co-relate to the number of accused or in the alternative in an attempt to rope in as many persons as possible from the other side*”. In “**Jawahar Singh Vs State**” **Cr. M(M) 727 of 1985 decided on 06.08.1985**, the allegation against the applicant Jawahar Singh was that main accused fired upon the deceased on the exhortation given by the Jawahar Singh and Hon'ble High Court of Delhi gave bail to the Jawahar Singh.

Therefore, without commenting further on the merits of the case as it can have bearing on the trial of the case, the court is of the opinion that since applicant / accused is a woman and have spent more than one year in jail and is on interim bail for the last 9 months and her conduct is satisfactory while on the interim bail as she has not disobeyed any condition imposed by the court. As applicant is already on interim bail therefore applicant can be enlarged on regular bail without any reasonable apprehension of her tampering with the prosecution evidence or absconding. **Therefore, the application is hereby allowed and accused applicant is granted regular bail on furnishing personal bond in the sum of Rs. 50,000/- with one surety in the like amount subject to the following terms and conditions :-**

1. Applicant will attend trial on each and every date with authorized counsel so that trial is not delayed.
2. Applicant will not tamper with the evidence of the case of the

prosecution in any manner.

3. Applicant will not contact the opposite party, and will not try to influence the prosecution witnesses.

4. Applicant will furnish her mobile number to the concerned SHO and will keep it switched on at all the times and will share her live location with the SHO once every day.

At this stage counsel for the accused / applicant prayed that surety bonds furnished by applicant at the time of interim bail be considered for the purpose of regular bail.

At request, the surety bonds already filed on the record while releasing accused on interim bail is extended for the duration of the trial.

Nothing stated herein shall tantamount to expressions on the merits of the case.

Copy of this order be given dasti to the counsel for the applicant/accused.

(Vipin Kharb)
ASJ-04(SW)/Dwarka Courts
26.08.2022