

19.07.2024

Present: Shri Dushyant Siwatch, Ld. Addl. Public Prosecutor for the State.
Shri Praveen Singh, Ajay Sharma and Umesh Sharma, counsels for the applicant/accused.
IO Inspector Mukesh Kumar.
Ms. Harjeet Kaur, complainant in person.

The applicant/accused Tushar @ Aniket has moved the bail application under Section 489 B.N.S.S. for grant of bail.

During the course of arguments, it has been argued on behalf of Counsel for applicant/accused that applicant/accused has been falsely implicated in the present case and is in custody since 06.02.2020. It is further submitted that the applicant had withdrawn his bail application before the Hon'ble High Court of Delhi vide order dated 24.04.2024 with the liberty to approach the Trial Court after examination of prosecution witness Shalini is concluded. It is further submitted by the Counsel for the applicant/accused that he will not cross-examine PW Shalini as she is not a witness related to the applicant/accused. It is further submitted that the PW-1 has during her testimony denied that the applicant/accused was present alongwith other co-accused person on the day of incident at District Centre Mall and PW-1 has also not mentioned the name of applicant/accused in her statement recorded under Section 164 Cr.P.C. It is submitted that the weapon of offence has been planted upon the applicant/accused and even the deposition of the mother of deceased PW-6 is

contradictory to the case to the prosecution. It is submitted that the applicant/accused had not spoken to PW Shalini and there is no incriminating evidence including the FSL result against him. It is submitted that applicant/accused is ready to abide by any condition imposed while grant of bail. It is prayed that applicant/accused be granted bail.

Reply has been filed by the IO.

The present application has been opposed by Ld. Addl. PP for the State on the ground that the allegations against the applicant/accused are grave and serious in nature. It is further submitted that applicant/accused was actively involved in the commission of the said offence alongwith other co-accused person and even the weapon of offence has been recovered at his instance. It is further submitted that the fire bullet also matched with the firearm recovered from both the accused persons. It is further submitted that the main public witness Shalini is still remaining to be examined. It is prayed that present application be dismissed.

Arguments heard. Record perused. Considered.

Perusal of the record reflects that charge under Section 302 IPC & 25/27 Arms Act has been framed against the applicant/accused. The matter is at the stage of prosecution evidence and PW Shalini is yet to be examined in the present case. It is further seen that PW-1 has stated during her deposition that whenever and wherever she and deceased Gagandeep used to go, accused Tushar and Sumit used to follow them. The witness also stated during her cross-examination by Ld. Addl. Public Prosecutor for the State that on 04.02.2020 that he had seen Tushar alongwith accused Sumit at District Centre, Janak Puri

and she, however, stated during her cross-examination conducted by Counsel for accused on 18.11.2022 that she had not seen Tushar in the mall of District Centre. It is settled proposition of law that evidence cannot be read in piecemeal and has to be read as a whole. PW-6 Smt. Harjeet Kaur has also stated during her deposition that she had seen both the accused persons including the applicant/accused following her son (since deceased). It is further alleged by the prosecution that co-accused Sumit has used the mobile phone of the applicant/accused to threaten the witnesses at the time of alleged incident. Therefore, considering the gravity of offence and the facts and circumstances discussed above, I am not inclined to grant bail to the Applicant/accused at this stage. Hence, bail application of the Applicant/accused is dismissed.

Nothing stated in the order shall tantamount to expression on merits of the case.

Copy of this order be given dasti to the Counsel for the Applicant and IO, as prayed for.

Copy of the order be sent to concerned Jail Superintendent for necessary information.

(Gurmohina Kaur)
ASJ-05/South-West District,
Dwarka Courts/New Delhi
19.07.2024