

(2022) 03 DEL CK 0159
In the Delhi High Court
Case No : Bail Application No. 93 Of 2020

Sharukh @ Tannu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-03-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 302
Arms Act, 1959 — Section 25, 27, 54, 59

Citation : (2022) 03 DEL CK 0159

Hon'ble Judges : Subramonium Prasad, J

Bench : Single Bench

Advocate : Hemant Choudhary, Amit Chadha

Final Decision : Dismissed

Judgement

Subramonium Prasad, J

1. The petitioner seeks bail in FIR No.43/2018 dated 21.02.2018 registered at Police Station Sadar Bazar for offences under Section 302/120-B/34 IPC read with Sections 25/27/54/59 Arms Act.

2. Facts, in brief, leading to the present FIR are as follows:-

i. On 21.02.2018, information was received at Police Station Sadar Bazar vide DD No.12A stating that one person is lying dead and his throat has been slit. Police reached the spot i.e Shahi Idgah Park, Motia Khan, Sadar Bazar, Delhi and found a male body there with his throat slit and injury marks on his abdomen. Deceased was identified as Shoaib @ Gandhi by the father of the deceased. FIR No.43/2018 dated 21.02.2018 was registered at Police Station Sadar Bazar for offences under Section 302 IPC.

ii. During investigation, one witness namely, Md. Tahid, disclosed that on 20.02.2018 at about 9:15 PM he saw the deceased Shoaib @ Gandhi along with Sakir, Sharukh (the Petitioner herein), Ravi and one CCL (X). It is stated that all

of them were consuming liquor. Tahid disclosed that he left the place at about 10:00 PM. He further stated that at about 8:00 AM in the morning he came to know that Shoaib @ Gandhi has been stabbed to death.

iii. It is stated that on 22.02.2018 Ravi Kohli was apprehended. He disclosed that he and Sakir had enmity with Shoaib @ Gandhi and on 20.12.2018, at about 8:00 PM, Sakir called him and asked him to come to Idgah. It is stated that when he reached Idgah, Sakir, Sharukh (the Petitioner herein), Shoaib @ Gandhi & the CCL - 'X', were already there and they were consuming liquor. It is stated that he also joined them and started consuming liquor. It is stated that after some time he had a heated argument with Shoaib and they had a fight. It is stated that during the scuffle Sakir handed-over a knife to him and the Petitioner herein and the CCL - 'X' held Shoaib. It is stated that he gave several blows on the chest and abdomen of the deceased - Shoaib @ Gandhi. It is further stated that when the deceased fell on the ground, Ravi slit his throat with the knife.

iv. On the disclosure statement of Ravi, Shakir and the Petitioner herein were arrested. The knife, which was used in the incident was recovered and opinion has been received from doctor regarding the knife and the doctor has opined that the injuries which were found on the body of the deceased could have been caused by the knife recovered from the accused or by any such similar weapon. Blood stained clothes of the Petitioner were recovered and sent to FSL and the FSL report has opined that the blood on the clothes of the Petitioner is of deceased's - Shoaib.

v. Charge-sheet has been filed. Trial has begun and eight out of twenty witnesses have been examined.

vi. The petitioner approached the Sessions Court by filing an application for grant of regular bail and the same was rejected by the learned Additional Sessions Judge, Central, Tis Hazari Courts, New Delhi, vide order dated 11.11.2019.

vii. The petitioner has, thereafter, approached this Court for grant of bail.

3. Mr. Hemant Choudhary, learned counsel for the petitioner, submits that the witness - Tahid, who had narrated the entire incident to the Police, has been examined and he has turned hostile. He submits that the Petitioner should be deemed innocent unless he is found guilty. He submits that public witnesses have been examined and there is no necessity for keeping the Petitioner in further custody.

4. Per contra, Mr. Amit Chadha, learned APP for the State, contends that the Petitioner is accused of committing a very heinous offence wherein a person has lost his life because of multiple stab wounds. He states that just because the witness who had seen the Petitioner and other accused with the deceased has turned hostile, it does not mean that the entire evidence against the Petitioner has to be discarded. He further states that certain witnesses are yet to be examined and the possibility of Petitioner tampering with evidence and

influencing the witnesses cannot be ruled out.

5. Heard Mr. Hemant Choudhary, learned counsel for the petitioner, Mr. Amit Chadha, learned APP for the State and perused the material on record.

6. The petitioner is accused of an offence of brutal murder. As rightly stated by Mr. Amit Chadha, learned APP for the State, this Court should not analyse the deposition of the witnesses at this juncture. The deposition will be scrutinized by the Trial Court at the conclusion of trial. Clothes of the Petitioner contains the blood of the deceased and it cannot be said that there is no material against the Petitioner.

7. The Apex Court in a number of judgments has laid down the factors which have to be taken into account for grant of bail which are as under

- (i) nature and gravity of offence,
- (ii) probability of influencing witnesses,
- (iii) tampering of evidence,
- (iv) evading the administration of justice,
- (v) role alleged against the accused

8. The Petitioner is accused of a very serious offence. blood of the deceased has been found on the clothes of the Petitioner. The nominal roll which has been filed with the petition shows that the Petitioner's conduct in jail is also unsatisfactory. Possibility of the Petitioner threatening the witnesses, who are yet to be examined, cannot be ruled out. Looking at the material on record, chances of the Petitioner fleeing from justice also cannot be ruled out.

9. Considering the entirety of the facts and circumstances of this case, this Court is not inclined to grant bail to the Petitioner at this juncture.

10. Accordingly, the petition is dismissed with the above observations along with pending application(s), if any.