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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 29.04.2021

+ **BAIL APPLN. 1200/2021**

GULFAM alias VIP

..... Petitioner

Through: **Mr. Salim Malik, Advocate**

Versus

STATE

..... Respondent

Through: **Mr. D.K. Bhatia, Special Public
Prosecutor with SI Manoj**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

The hearing has been conducted through video conferencing.

1. Petitioner is seeking bail in FIR No. 92/2020, registered at police station Dayalpur, Delhi for the offences under Sections 147/148/149/153A/505/436/307/120B/34 IPC and Sections 27/30 Arms Act on the ground that he is innocent and has been falsely implicated in this case. He is in custody since 16.03.2020.

2. Notice issued.

3. Mr. D.K. Bhatia, learned Special Public Prosecutor for respondent/State accepts notice.

4. With the consent of both the sides, the present petition has been taken up for hearing and disposal.

5. Learned counsel for petitioner submits that by the present petition, petitioner is primarily seeking bail on parity with accused Tanvir Malik, who has already been granted bail in this FIR case by this Court on 04.02.2021 and accused Shah Alam, who has been granted bail on 05.04.2021 by the Court of Sessions as well as accused Nazim, who has also been granted bail by the Court of Sessions on 28.11.2020.

6. He further submits that petitioner was not initially named in the FIR in question and prosecution has failed to establish its case, as neither the CCTV footage nor the call detail record of petitioner proves his presence at the place of incident. Further submitted that neither the official eye witnesses nor the independent witnesses, made a PCR call or complaint regarding the alleged incident and MLC obtained by the prosecution does not also ascertain the details of gunshot injury received by the injured.

7. Learned Special Public Prosecutor for State has opposed the present petition, however, he is unable to establish the fact as to how the role of petitioner is different from that of Tanvir Malik. The case of the prosecution is that the licensed pistol recovered in FIR No. 101/2020, registered at police

station Khajuri Khas, Delhi is the same weapon which has been used by the petitioner in the present FIR case.

8. Pertinently, no weapon/arm has been recovered at the instance of petitioner in this FIR case. This court is informed that the FSL report qua weapon of offence in this case was returned with objection and want of live cartridges used in the alleged incident and requisite steps regarding the same are in progress. *Prima facie* prosecution has not been able to satisfy this Court as to how the licensed fire arm recovered in FIR No. 101/2020, registered at police station Khajuri Khas, Delhi was used by the petitioner in this case. Further, lacune and discrepancies in the investigation carried out in the FIR in question have already been dealt in detail in the case of *Tanvir Malik* [Bail Appln.3864/2020] and are not repeated for the sake of brevity. Charge sheet in this case has already been filed and trial shall take substantial time.

9. Accordingly, without commenting on the merits of the case, this Court is of the opinion that petitioner deserves to be released on parity with other co-accused who are on bail in this FIR case. This petition is accordingly allowed. Petitioner is directed to be released on bail forthwith upon his furnishing personal bond in the sum of Rs.20,000/- with one surety

in the like amount, to the satisfaction of the trial court.

10. The petitioner shall not directly or indirectly influence any witness or tamper with the evidence and shall appear before the court as and when directed.

11. With aforesaid directions, the present petition is disposed of, while making it clear that any observation made herein shall not influence trial of the prosecution case.

12. A copy of this order be transmitted to the Trial Court and Jail Superintendent concerned for information and compliance.

APRIL 29, 2021
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SURESH KUMAR KAIT, J

