

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

% *Judgment delivered on: 28.12.2022*

+ **BAIL APPLN. 3165/2022**
MUMTAZ Applicant

versus

STATE (NCT OF DELHI) & ANR. Respondents

Advocates who appeared in this case:

For the Applicant : Mr. K K Manan, Sr. Adv. with Mr. Robin Tyagi & Ms. Udit Bali, Adv.

For the Respondents : Ms. Richa Dhawan, APP for State
ASI Dinesh & HC Bal Krishan, PS
Sabzi Mandi

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of Code of Criminal Procedure, 1973 ("Cr.P.C."), seeking regular bail in FIR No. 471/2022, filed under Section 25 of the Arms Act, 1959, registered at Police Station Sabzi Mandi.

2. It is alleged that on a specific input that the accused persons call people from all over Delhi and other States for the purpose of gambling, on 28.08.2022, a raid was conducted on the ground floor of House No. 32/6, Ground Floor, Sita Saran Colony, Sabzi Mandi in which 48 persons were apprehended and the FIR under Sections 3/4/5/9/55 of the Delhi Public Gambling Act, 1955, was registered at PS Sabzi Mandi.

3. It is claimed that during the search, various weapons were

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recovered.

4. One semi-automatic pistol along with five cartridges were recovered from the applicant and a separate FIR No. 471/2022 under Section 25 of the Arms Act was registered.

5. Learned Senior Counsel for the applicant submits that in the same raid, co-accused, Jitender and Shiva were also found in possession of the weapons and have been granted bail by the learned Trial Court. He submits that the said accused were also found to be involved in other cases.

6. He submits that in the present case, the arms were planted by the police only for the reason that there are other cases also pending against the applicant. The applicant has been falsely implicated and has been made scapegoat only for the reasons that the cases had been registered against him on earlier occasions.

7. The State has filed status report and mentioned that the applicant has been previously involved in cases of similar nature. Learned Senior Counsel for the applicant submits that in all such cases the applicant has either been discharged / found not involved or is on bail.

8. On the last date of hearing, the Court had directed the State to file updated status report since it was specifically argued that the applicant is either on bail or has been discharged in the pending cases. An updated status report has been filed. It is not denied that the applicant in all the cases, which are referred in the status report has either been discharged / found not involved or is on bail.

9. Learned APP for the State opposes the bail application and submits that looking at the antecedents of the applicant, the bail ought not to be granted.

10. Learned Senior Counsel has drawn my attention to the
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order dated 30.05.2022, passed by the coordinate Bench of this Court in another FIR under Sections 25/54/59 of the Arms Act at Police Station Seelampur, Delhi, in the case of the present applicant wherein the Hon'ble Court had taken note of the fact that the applicant has either been discharged, acquitted or granted bail in the earlier cases and had granted bail to the applicant.

Reasoning

11. The applicant is in custody since 28.08.2022. The co-accused who were found to be in possession of the weapons have already been granted bail by the learned Trial Court.

12. The alleged arms have already been recovered and no further recovery is allegedly left to be made at the instance of the applicant.

13. The allegations, whether the accused was in custody of the alleged weapons or whether they were planted by the Police would be tested during the trial.

14. As noted above, the applicant, though, was found to be involved in 23 other cases but has either been discharged, acquitted or granted bail.

15. The Hon'ble Supreme Court in the case of ***Prabhakar Tewari v. State of U.P., (2020) 11 SCC 648*** had observed that mere pendency of several criminal cases against the accused cannot itself be the basis for refusal of bail. The same can be a factor, however, cannot a sole basis for refusal of prayer of bail.

16. Admittedly, even though charge-sheet is filed, the investigation, as per the State, is likely to take more time before any trial can start. It is not alleged that the applicant has tried to jump the bail in any of the cases where he has been granted bail earlier by the Courts.

17. The object of bail is not punitive but to secure the presence
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of accused during the trial. It has also not been alleged that incarceration of the applicant is required in order to prevent the applicant from tampering with evidence or to prevent him from extending any inducement or threat to any of the witnesses.

18. Without commenting further on the merits of the case, keeping the facts and circumstances in mind and the fact that the trial is likely to take some time, I am satisfied that no purpose would be served by keeping the applicant in further incarceration and the applicant has made out a case for grant of regular bail.

19. Keeping in view the aforesaid, the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹50,000/- with two sureties of the like amount to the satisfaction of learned Trial Court on the following conditions:

- a. He shall under no circumstance leave the city without informing the concerned IO/SHO;
- b. He shall appear before the learned Trial Court on every date;
- c. He shall participate and cooperate in any further investigation as and when required;
- d. He shall upon his release provide his mobile number to the concerned IO and keep it switched on at all times and also drop google pin giving his location to the concerned IO.

20. In the event of there being any FIR/DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by way of seeking cancellation of bail.

21. The bail application is allowed in the aforementioned terms.

22. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the present
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application and should not influence the outcome of the trial.

AMIT MAHAJAN, J

DECEMBER 28, 2022

"SS / KDK" / hK



Signature Not Verified

Digitally Signed
By: KAMAL DEEP KAUR
Signing Date: 28.12.2022
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