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IN THE COURT OF SH. AMITABH RAWAT,
ADDITIONAL SESSIONS JUDGE-03
(SHAHDARA), KARKARDOOMA COURT, DELHI

Bail Application No. 417-2021

FIR No. 139/2020

PS- Welcome

U/S. 143/144/145/147/148/149/302/120B/153-A/505/188 IPC & 27 Arms Act
State Vs. Mohd. Shahzad

04.03.2021

ORDER

1. This order shall dispose off the bail application under Section 439 Cr.P.C moved on behalf of the applicant/ accused Mohd. Shahzad.

2. Arguments were heard at length on behalf of the accused by Sh. Pritish Sabharwal, Ld. Counsel for the accused and for prosecution by Sh. Anuj Handa, Ld. Special Prosecutor. I have perused the record.

3. (i) Ld. Counsel for the applicant/accused Mohd. Shahzad had submitted that the applicant is a law-abiding citizen and has clean antecedents. He is aged about 28 years and has a family consisting of old parents, wife and two minor children aged around 2.5 years (daughter) and around 6 years (son). The applicant is suffering from Typhoid and liver disease. He is working as a technician/engineer with a well-reputed company in Elica PB India Pvt. Ltd., since 2017 and has a wonderful record in the company as well.

(ii) It was further submitted that applicant was falsely arrested in the present case on 03.11.2020 and is in judicial custody since 06.11.2020.

(iii) It was further submitted that present FIR is an origination from an FIR No. 94/2020 which was registered on 26.02.2020 on the premise that an

information was received in PS Welcome that people of two communities had assembled at Kabir Nagar, in front of Maujpur-Babarpur Metro Station. Subsequently, three deceased persons were found and the investigating agency registered the present FIR for the alleged death of Prem Singh. It is submitted that said FIR does not mention the name of the applicant and the arrest of the applicant has been made solely on the basis of identification of the applicant by witnesses through the CAF forms which contain the black and white photographs, which are not even clear, as no judicial TIP has been taken place and no any such incriminating evidence. It is further stated that investigating agency deliberately did not conduct a TIP because the alleged witnesses under no probabilities would have identified the innocent applicant who was at his house on the day of alleged incident. It is also pertinent to mention that the FIR was registered on 21.03.2020 whereby the arrest of the applicant has taken place on 02.11.2020 i.e. after a period of eight months. Even the co-accused Imran @ Cheera and Asif were arrested on 13.04.2020 having not named the applicant in their disclosure statement. Even the public witnesses have not named the applicant. Applicant was arrested when he was attending a complaint with respect to a technical fault of the Elica Microwave (on behalf of company) at D-19, New Friends Colony, New Delhi alongwith co-accused Mohd. Shariq. He was never called for joining the investigation.

(iv) It was further submitted that no recovery has been made from the applicant. Investigation qua applicant is complete and no purpose would be served by keeping the applicant behind bars. The applicant fulfill the triple test laid down by the Supreme Court of India. Applicant is ready to abide by any condition as may be imposed by this court. He undertakes not to tamper with any evidence or influence any witness of the case.

(v) It was submitted that Ct. Pushkar, is a planted witness. Moreover, applicant did not stab anyone and it is not shown that applicant had taken a video/photo of Imran. It is also submitted that applicant's house is near

the place of incident.

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It was, thus, prayed that accused be released on bail. He has relied upon a catina of judgments.

4. (i) On the other hand, it was submitted by Ld. Prosecutor that initially on 26.02.2020, on the complaint of SI Amit, PS Welcome, a case FIR No. 94/20 u/s 143/144/147/148/149/323/307/302 IPC and 27 Arms Act PS Welcome was registered. The gist of FIR No. 94/20, PS Welcome are that on 25.02.2020, information was received in PS Welcome that people of two communities had assembled at Kabir Nagar, in front of Maujpur-Babarpur Metro Station. On the receipt of above information, SI Amit of PS Welcome reached the spot. As per the complaint of SI Amit, around 500-600 people of two different communities had assembled at Kabir Nagar, in front of Babarpur Metro Station. The groups were shouting slogans in favour of and against CAA/NRC. The people had stones and sticks and the gathering had become violent. The gathering started riots and started throwing stones at each other. The gathering was directed by the Police to remain calm but to no avail. In the mean time, SI Amit received information about the injured people getting admitted in GTB Hospital.

(ii) There were three deceased in FIR No. 94/20 PS Welcome namely Istiaq Khan, Prem Singh and Muddishir. Later, three Separate FIRs have been registered for each dead body i.e. FIR No. 138/2020 dated 21.03.2020 u/s 143/144/147/ 148/ 149/ 302 IPC & 27 Arms Act P.S. Welcome; FIR No. 139/2020 dated 21.03.2020 u/s 143/144/147/ 148/ 149/ 302 IPC P.S. Welcome; FIR No. 140/2020 dated 21.03.2020 u/s 143/144/147/ 148/ 149/ 302 IPC & 27 Arms Act P.S. Welcome.

(iii) The present case was registered on the complaint of SI Amit Bhardwaj, PS Welcome. The gist of incident is that on 25.02.2020 at 17:47 hrs, a DD entry was lodged at PS Welcome mentioning that an unknown person aged 40 years r/o unknown has been brought to GTB hospital from Mata Mandir near

Maujpur Red Light in unconscious condition. From the perusal of the MLC, it has come to notice that patient brought in casualty by unknown in unconscious state, alleged history of assault by mob at Maujpur Red Light told by another patient namely Diwakar. During the course of investigation of case FIR No. 94/20 PS-Welcome, the deceased was identified as Prem Singh s/o Jagdish r/o C-376, Gali No. 03, Birjपुरi Delhi. Post-mortem of deceased was got conducted at GTB Hospital. From the perusal of PM report, it came to light that the death of the deceased was caused by injury sustained from a sharp weapon.

(iv) During the course of investigation, it became clear that the incident of stabbing of deceased Prem Singh took place at Main Maujpur Road, in front of C-12, Yamuna Vihar.

(v) During the course of investigation, two persons namely Imran @ Cheera and Asif were arrested and charge-sheet was filed against them.

(vi) During the course of investigation, on 02.11.2020, two public witnesses were examined they stated that on 25.02.2020, at around 12:30, a mob of rioters came from Kardampuri puliya, the rioters were carrying danda, sticks, knives, swords, petrol bombs, pistols, stones etc. and they were rioting on main 66 foota road Maujpur. They further stated that in the mean time, one person was chased by the rioters and he was stabbed by the rioters, under foot over bridge, in front of C-12, Yamuna Vihar. That injured person some how managed to come to PWD office and he sat on the pavement in front of BSES office. A cloth was wrapped around his stomach and he was taken to CAT ambulance by two people on motor cycle. The public witnesses were shown the photographs of suspects which were on CAFs. From the CAFs, they identified the photographs of accused 1. Shahzad s/o Mohd. Kafeel Ahmad r/o H. No. D-26, Gali number 8, Kardampuri Extension, Delhi, 2. Md. Imran s/o Md. Dilshad r/o B-14/33, Gali No. 5, Kabir Nagar, Delhi and 3. Md. Shariq s/o Naeem Ahmad r/o B-6/124, third floor, Flat no. 7-C, Gali NO. 5, Kabir Nagar, Gokulpuri, Delhi and told that they are the same persons who were part of mob which was rioting at 66

foota main Maujpur road and which chased and stabbed a person under foot over bridge, in front of C-12, Yamuna Vihar. They were also carrying stick (danda) in their hand.

(vii) During the course of investigation, on 03.11.2020, the accused Md. Shariq and Md. Shahzad were arrested in the present case. They confessed their involvement in riots that occurred at C-12, Yamuna Vihar, Main Maujpur Road on 25.02.2020. They disclosed that on 25.02.2020, they were part of mob which were rioting against CAA/NRC on Main Maujpur Road. They along with others were chasing and injuring the Hindu people on Main Maujpur Road. Many of them were carrying sticks, knives, swords, petrol bombs, pistols, stones etc. and they were rioting on main 66 foota road Maujpur. They further disclosed that they were carrying sticks and stones for rioting. At around 12:30pm, they along with others chased one Hindu person and he was stabbed by the rioters, under foot over bridge, in front of C-12, Yamuna Vihar. That injured person somehow managed to escape to PWD office and he sat on the pavement in front of BSES office. As there are many houses of Hindus at C-12, Yamuna Vihar, thus they left the spot and started rioting again on Main Maujpur Road. One mobile phone was recovered from the accused Md. Shahzad and one mobile phone was recovered from the accused Md. Shariq. Also, a motor cycle bearing registration number DL 5S AZ 8919 was seized from them and it was found registered in the name of Md. Imran s/o Md. Dilshad r/o B-14/33, Gali No. 5, Kabir Nagar, Delhi.

(viii) During the course of investigation, a video was recovered from the mobile phone of accused Md. Shahzad. The video which was recorded by the accused himself at Jyoti Nursing Home, Jyoti Nagar, is of the suspect Md. Imran when he was being treated at Jyoti Nursing Home. The accused Md. Shahzad has disclosed that his friend Md. Imran was shot in the leg at Main Maujpur Road while they were rioting and he had taken him to Jyoti Nursing Home for treatment and thereafter to GTB Hospital.

(ix) During the course of investigation, the accused persons had

pointed out the scene of crime i.e. under foot over bridge, in front of C-12, Yamuna Vihar, Main Maujpur Road where they were rioting and on 25.02.2020 at around 12:30pm, they along with other rioters had stabbed a person.

(x) During the course of investigation, the accused persons were identified by three public witnesses namely Manish Pahawa, Pramod Kumar and Ashok Jain as the same persons who were part of the rioters' mob which on 25.02.2020 at around 12:30pm, had stabbed a person under foot over bridge, in front of C-12, Yamuna Vihar, Main Maujpur Road.

(xi) During the course of investigation, at the instance of accused Md. Shariq, a stick (danda) was recovered which was used by him during riots on 25.02.2020, which was recovered from the park between footover bridge at C-12, Yamuna Vihar and MCD Court, Yamuna Vihar.

(xii) During the course of investigation, the accused persons had pointed out the house of the suspect Md. Imran s/o Md. Dilshad r/o B-14/33, Gali No. 5, Kabir Nagar, Delhi who was also involved in the riots with them.

(xiii) During the course of investigation, the accused Md. Shahzad pointed out Jyoti Nursing Home, Jyoti Nagar where he had taken his friend Md. Imran for treatment after he had sustained a bullet injury in his leg while rioting. He had also recorded a video in his mobile phone while Md. Imran was being treated by the Doctors.

(xiv) During the course of investigation, Dr Jitender Giri s/o Maharaja Giri r/o Ram Nagar Baghpat, UP, Age-28 years of Jyoti Nursing Home was examined. He stated that on 25.02.2020 at around 01:30pm, a person namely Md. Imran who had sustained a bullet injury in his leg, was given first aid by him. Dr Jitender Giri also identified the accused Md. Shahzad as the same person who had accompanied Md. Imran at the time of treatment.

(xv) During the course of investigation, the mobile phones recovered from the accused persons have been sent to FSL for examination and

data recovery. The result of FSL's examination is still awaited.

(xvi) During the course of investigation, the search of accused Mohd Imran was made but he could not be traced as he was evading investigation will fully. Thus, NBW against him was obtained of the concerned court. Efforts were made to execute the NBW against Mohd Imran but he could not be traced. As the accused Md. Imran evaded his arrest intentionally, thus NBW could not be executed. The proceeding u/s 82 CrPC against accused Md. Imran was initiated.

(xvii) During the course of investigation, a notice u/s 91 CrPC was served to Medical Superintendent, Jyoti Nursing Home, Jyoti Nagar, Delhi. A reply to this notice was received. In the reply they had submitted that on 25.02.2020, Mohd Imran had visited emergency of their nursing home with leg injury. He was given first Aid by Dr. Jitender Giri. This clearly suggests the presence of accused persons at Jyoti Nursing Home soon after the commission of crime.

(xviii) The presence of applicant is established by his mobile location at the place and time of incident.

(xix) During the course of investigation, SI Rahul, PS Bhajanpura was examined and his statement was recorded u/s 161 CrPC. He stated that he is investigating the case FIR No. 68/20 dated 26.02.2020 u/s 144/145/147/148/149/ 151/186/353/332| 336/436 IPC & 27 Arms Act PS Bhajanpura. Mohd Imran s/o Mohd Dilshad r/o B-33, Gali No.5, Kabir Nagar, Delhi is one the injured in this case vide MLC No. D-26 dated 25.02.2020, GTB Hospital and the same is placed on the case file of FIR No. 68/20 PS Bhajanpura. He produced the photocopy of MLC No. D-26 dated 25.02.2020, GTB Hospital of Mohd Imran s/o Mohd Dilshad r/o B 33, Gali No.5, Kabir Nagar, Delhi and the same was seized through seizure memo. He further stated that he had telephonically called Mohd Imran on his mobile number 9871033094 from his mobile number 8743801034 and asked him to join investigation. He had also

sent staff to house of Mohd Imran but Mohd Imran told him that he was not injured on 25.02.2020 and he had neither visited GTB Hospital nor his MLC was prepared at GTB Hospital.

(xx) It is pertinent to mention that the accused person has been identified by independent witnesses during chance TIP. Thus, no Judicial TIP of accused was got conducted.

(xxi) On 30.01.2021, the Charge-sheet against accused Md. Shariq was filed and cognizance u/s 143/144/145/147/148/149/302/120B IPC & 27 ARMS ACT against the accused vide order dated 02.02.21 was taken.

(xxii) Also, the Hon'ble Court has dismissed the bail application of the accused vide order dated 30.01.21. Thus, there is no fresh ground for filing fresh bail application.

(xxiii) Also, the accused had filed bail application in the Hon'ble High Court of Delhi and the same was disposed off by the Hon'ble High Court vide order dated 10.02.21.

It is, thus, prayed that bail application be dismissed.

5. (a) As per the prosecution, initially on 26.02.2020, FIR No. 94/20, P.S. Welcome under Section 143/144/147/148/149/323/307/302 IPC was registered and there were three deceased namely Ishtiyak Khan, Prem Singh and Muddashir. Later, three separate FIRs No. 138/20, 139/20 & 140/20 were registered. The present FIR was registered on 21.03.2020 regarding the said incident in which deceased Prem Singh was killed at Main Maujpur Road in front of C-12, Yamuna Vihar, Delhi.

Thus, there is no delay in registration of the FIR .

(b) The accused/applicant is alleged to have been identified by three witnesses through the CAF form and he was arrested on 02.11.2020 i.e. after the period of eight months of the registration of the FIR.

(c) The contention that the name of the applicant is not mentioned in the FIR is not so relevant as FIR is only a First Information Report leading to investigation which brings out the role of accused person.

(d) The present case pertains to the killing of deceased Prem Singh on 25.02.2020. The Postmortem report also shows that death was caused by injury sustained from a sharp weapon.

(e) There are two witnesses namely Raman Kohli and Diwakar Dubey who have identified accused persons Imran and Asif. Imran was identified as a person who had held Prem Singh and Asif as the one who stabbed Prem Singh.

(f) Ld. Counsel for the accused/applicant has relied upon the judgment passed by Hon'ble Supreme Court in **Manu Bhai Rati Lal Patel Vs. State of Gujarat, 2013 1 SCC 314** wherein it was held that if police custody is not extended, judicial custody remand is not an automatic consequence and the Hon'ble Supreme Court laid down the triple test doctrine, according to which the grounds on which the accused can be remanded to judicial custody are very different viz.(i) flight risk (ii) tampering with evidence and (iii) influencing witnesses. Further reliance is placed upon the judgment in P. Chidambaran Vs. Central Bureau of Investigation wherein court reiterated the law of triple test for bail laid down in Manu Bhai Case.

(h) In the present case, FIR was registered on 21.03.2020 and the applicant Shehzad was arrested almost after the expiry of seven months from the date of FIR in the present case on 03.11.2020 on the basis of being identified by the witnesses namely Manish Pahawa, Pramod Kumar and Ashok Jain through the CAF forms. Though witnesses are there yet no judicial test identification parade has been conducted and the identification has taken place on the basis of black and white photographs of the applicant/accused on the CAF forms.

(i) As per the case of the prosecution, the deceased Prem Singh

was stabbed by a sharp weapon, which has been recovered from another accused Imran @ Cheera. As per prosecution, Imran was identified as a person who had held Prem Singh and Asif as the one who stabbed Prem Singh. The applicant's role is that of participation in the unlawful assembly also constituting of accused Imran and Asif and thereby murder by way of imputation u/s. 149 IPC.

(j) The accused/ applicant resides in the vicinity of the scene of crime and therefore him being present near the scene of crime is but natural. The investigation against the accused is complete and the charge-sheet has been filed in the court.

(k) Further in the present case, the prosecution has not placed on record any material to suggest that the applicant is at flight risk or there are chances of him fleeing the arms of justice. The applicant has been in judicial custody since 06.11.2020.

8. In view of the facts and circumstances of the case, the bail application under section 439 Cr.P.C of applicant under section 439 Cr.P.C of applicant Mohd. Shahzad is allowed. Accordingly, applicant is admitted to bail on his furnishing Bail bond in the sum of Rs.15,000/- with one surety of the like amount to the satisfaction of Ld. MM/Link MM/Duty MM subject to the conditions:

(a) The applicant/accused shall neither leave the jurisdiction of NCT of Delhi without prior permission of the court nor shall he indulge in any kind of criminal activity.

(b) He shall also not tamper with any evidence or contact any witnesses.

(c) He shall attend the court on every date of hearing or as directed by court.

Accordingly, the bail application under Section 439 Cr.P.C of accused Mohd. Shahzad stands disposed off accordingly.

Copy of this order be e-mailed to the Ld. Counsel for applicant/accused, Ld. Prosecutor and the I.O.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 04.03.2021

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(ii) It was further submitted that applicant was falsely arrested in the present case on 03.11.2020 and is in judicial custody since 06.11.2020.

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assembled at Kabir Nagar, in front of Maujpur-Babarpur Metro Station. Subsequently, three deceased persons were found and the investigating agency registered the present FIR for the alleged death of Prem Singh. It is submitted that said FIR does not mention the name of the applicant and the arrest of the applicant has been made solely on the basis of identification of the applicant by witnesses through the CAF forms which contain the black and white photographs, which are not even clear, as no judicial TIP has been taken place and no any such incriminating evidence. It is further stated that investigating agency deliberately did not conduct a TIP because the alleged witnesses under no probabilities would have identified the innocent applicant who was at his house on the day of alleged incident. It is also pertinent to mention that the FIR was registered on 21.03.2020 whereby the arrest of the applicant has taken place on 02.11.2020 i.e. after a period of eight months. Even the co-accused Imran @ Cheera and Asif were arrested on 13.04.2020 having not named the applicant in their disclosure statement. Even the public witnesses have not named the applicant. Applicant was arrested when he was attending a complaint with respect to a technical fault of the Elica Microwave (on behalf of company) at D-19, New Friends Colony, New Delhi alongwith co-accused Mohd. Shahzad. He was never called for joining the investigation.

(iv) It was further submitted that even the danda shown to be recovered from the applicant is from a park. Investigation qua applicant is complete and no purpose would be served by keeping the applicant behind bars. The applicant fulfill the triple test laid down by the Supreme Court of India. Applicant is ready to abide by any condition as may be imposed by this court. He undertakes not to tamper with any evidence or influence any witness of the case.

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come to notice that patient brought in casualty by unknown in unconscious state, alleged history of assault by mob at Maujpur Red Light told by another patient namely Diwakar. During the course of investigation of case FIR No. 94/20 PS-Welcome, the deceased was identified as Prem Singh s/o Jagdish r/o C-376, Gali No. 03, Birjपुरi Delhi. Post-mortem of deceased was got conducted at GTB Hospital. From the perusal of PM report, it came to light that the death of the deceased was caused by injury sustained from a sharp weapon.

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(v) During the course of investigation, two persons namely Imran @ Cheera and Asif were arrested and charge-sheet was filed against them.

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over bridge, in front of C-12, Yamuna Vihar. They were also carrying stick (danda) in their hand.

(vii) During the course of investigation, on 03.11.2020, the accused Md. Shariq and Md. Shahzad were arrested in the present case. They confessed their involvement in riots that occurred at C-12, Yamuna Vihar, Main Maujpur Road on 25.02.2020. They disclosed that on 25.02.2020, they were part of mob which were rioting against CAA/NRC on Main Maujpur Road. They along with others were chasing and injuring the Hindu people on Main Maujpur Road. Many of them were carrying sticks, knives, swords, petrol bombs, pistols, stones etc. and they were rioting on main 66 foota road Maujpur. They further disclosed that they were carrying sticks and stones for rioting. At around 12:30pm, they along with others chased one Hindu person and he was stabbed by the rioters, under foot over bridge, in front of C-12, Yamuna Vihar. That injured person somehow managed to escape to PWD office and he sat on the pavement in front of BSES office. As there are many houses of Hindus at C-12, Yamuna Vihar, thus they left the spot and started rioting again on Main Maujpur Road. One mobile phone was recovered from the accused Md. Shahzad and one mobile phone was recovered from the accused Md. Shariq. Also, a motor cycle bearing registration number DL 5S AZ 8919 was seized from them and it was found registered in the name of Md. Imran s/o Md. Dilshad r/o B-14/33, Gali No. 5, Kabir Nagar, Delhi.

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(ix) During the course of investigation, the accused persons had pointed out the scene of crime i.e. under foot over bridge, in front of C-12,

Yamuna Vihar, Main Maujpur Road where they were rioting and on 25.02.2020 at around 12:30pm, they along with other rioters had stabbed a person.

(x) During the course of investigation, the accused persons were identified by three public witnesses namely Manish Pahawa, Pramod Kumar and Ashok Jain as the same persons who were part of the rioters' mob which on 25.02.2020 at around 12:30pm, had stabbed a person under foot over bridge, in front of C-12, Yamuna Vihar, Main Maujpur Road.

(xi) During the course of investigation, at the instance of accused Md. Shariq, a stick (danda) was recovered which was used by him during riots on 25.02.2020, which was recovered from the park between footover bridge at C-12, Yamuna Vihar and MCD Court, Yamuna Vihar.

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(xiv) During the course of investigation, Dr Jitender Giri s/o Maharaja Giri r/o Ram Nagar Baghpat, UP, Age-28 years of Jyoti Nursing Home was examined. He stated that on 25.02.2020 at around 01:30pm, a person namely Md. Imran who had sustained a bullet injury in his leg, was given first aid by him. Dr Jitender Giri also identified the accused Md. Shahzad as the same person who had accompanied Md. Imran at the time of treatment.

(xv) During the course of investigation, the mobile phones recovered from the accused persons have been sent to FSL for examination and data recovery. The result of FSL's examination is still awaited.

(xvi) During the course of investigation, the search of accused Mohd Imran was made but he could not be traced as he was evading investigation will fully. Thus, NBW against him was obtained of the concerned court. Efforts were made to execute the NBW against Mohd Imran but he could not be traced. As the accused Md. Imran evaded his arrest intentionally, thus NBW could not be executed. The proceeding u/s 82 CrPC against accused Md. Imran was initiated.

(xvii) During the course of investigation, a notice u/s 91 CrPC was served to Medical Superintendent, Jyoti Nursing Home, Jyoti Nagar, Delhi. A reply to this notice was received. In the reply they had submitted that on 25.02.2020, Mohd Imran had visited emergency of their nursing home with leg injury. He was given first Aid by Dr. Jitender Giri. This clearly suggests the presence of accused persons at Jyoti Nursing Home soon after the commission of crime.

(xviii) The presence of applicant is established by his mobile location at the place and time of incident.

(xix) During the course of investigation, SI Rahul, PS Bhajanpura was examined and his statement was recorded u/s 161 CrPC. He stated that he is investigating the case FIR No. 68/20 dated 26.02.2020 u/s 144/145/147/148/149/ 151/186/353/332| 336/436 IPC & 27 Arms Act PS Bhajanpura. Mohd Imran s/o Mohd Dilshad r/o B-33, Gali No.5, Kabir Nagar, Delhi is one the injured in this case vide MLC No. D-26 dated 25.02.2020, GTB Hospital and the same is placed on the case file of FIR No. 68/20 PS Bhajanpura. He produced the photocopy of MLC No. D-26 dated 25.02.2020, GTB Hospital of Mohd Imran s/o Mohd Dilshad r/o B 33, Gali No.5, Kabir Nagar, Delhi and the same was seized through seizure memo. He further stated that he had telephonically called Mohd Imran on his mobile number 9871033094 from his mobile number 8743801034 and asked him to join investigation. He had also sent staff to house of Mohd Imran but Mohd Imran told him that he was not

injured on 25.02.2020 and he had neither visited GTB Hospital nor his MLC was prepared at GTB Hospital.

(xx) It is pertinent to mention that the accused person has been identified by independent witnesses during chance TIP. Thus, no Judicial TIP of accused was got conducted.

(xxi) On 30.01.2021, the Charge-sheet against accused Md. Shariq was filed and cognizance u/s 143/144/145/147/148/149/302/120B IPC & 27 ARMS ACT against the accused vide order dated 02.02.21 was taken.

(xxii) Also, the Hon'ble Court has dismissed the bail application of the accused vide order dated 30.01.21. Thus, there is no fresh ground for filing fresh bail application.

(xxiii) Also, the accused had filed bail application in the Hon'ble High Court of Delhi and the same was disposed off by the Hon'ble High Court vide order dated 10.02.21.

It is, thus, prayed that bail application be dismissed.

5. (a) As per the prosecution, initially on 26.02.2020, FIR No. 94/20, P.S. Welcome under Section 143/144/147/148/149/323/307/302 IPC was registered and there were three deceased namely Ishtiyak Khan, Prem Singh and Muddashir. Later, three separate FIRs No. 138/20, 139/20 & 140/20 were registered. The present FIR was registered on 21.03.2020 regarding the said incident in which deceased Prem Singh was killed at Main Maujpur Road in front of C-12, Yamuna Vihar, Delhi.

Thus, there is no delay in registration of the FIR .

(b) The accused/applicant is alleged to have been identified by three witnesses through the CAF form and he was arrested on 02.11.2020 i.e. after the period of eight months of the registration of the FIR.

(c) The contention that the name of the applicant is not mentioned in the FIR is not so relevant as FIR is only a First Information Report leading to investigation which brings out the role of accused person.

(d) The present case pertains to the killing of deceased Prem Singh on 25.02.2020. The Postmortem report also shows that death was caused by injury sustained from a sharp weapon.

(e) There are two witnesses namely Raman Kohli and Diwakar Dubey who have identified accused persons Imran and Asif. Imran was identified as a person who had held Prem Singh and Asif as the one who stabbed Prem Singh.

(f) Ld. Counsel for the accused/applicant has relied upon the judgment passed by Hon'ble Supreme Court in **Manu Bhai Rati Lal Patel Vs. State of Gujarat, 2013 1 SCC 314** wherein it was held that if police custody is not extended, judicial custody remand is not an automatic consequence and the Hon'ble Supreme Court laid down the triple test doctrine, according to which the grounds on which the accused can be remanded to judicial custody are very different viz.(i) flight risk (ii) tampering with evidence and (iii) influencing witnesses. Further reliance is placed upon the judgment in P. Chidambaran Vs. Central Bureau of Investigation wherein court reiterated the law of triple test for bail laid down in Manu Bhai Case.

(h) In the present case, FIR was registered on 21.03.2020 and the applicant Shehzad was arrested almost after the expiry of seven months from the date of FIR in the present case on 03.11.2020 on the basis of being identified by the witnesses namely Manish Pahawa, Pramod Kumar and Ashok Jain through the CAF forms. Though witnesses are there, yet no judicial test identification parade has been conducted and the identification has taken place on the basis of black and white photographs of the applicant/accused on the CAF forms.

(i) As per the case of the prosecution, the deceased Prem Singh

was stabbed by a sharp weapon, which has been recovered from another accused Imran @ Cheera. As per prosecution, Imran was identified as a person who had held Prem Singh and Asif as the one who stabbed Prem Singh. The applicant's role is that of participation in the unlawful assembly also constituting of accused Imran and Asif and thereby murder by way of imputation u/s. 149 IPC.

(j) The accused/ applicant resides in the vicinity of the scene of crime and therefore him being present near the scene of crime is but natural. The investigation against the accused is complete and the charge-sheet has been filed in the court.

(k) Further in the present case, the prosecution has not placed on record any material to suggest that the applicant is at flight risk or there are chances of him fleeing the arms of justice. The applicant has been in judicial custody since 06.11.2020.

(l) If accused Imran is absconding, he will suffer consequences and not applicant.

8. In view of the facts and circumstances of the case, the bail application under section 439 Cr.P.C of applicant under section 439 Cr.P.C of applicant Mohd. Shariq is allowed. Accordingly, applicant is admitted to bail on his furnishing Bail bond in the sum of Rs.15,000/- with one surety of the like amount to the satisfaction of Ld. MM/Link MM/Duty MM subject to the conditions:

(a) The applicant/accused shall neither leave the jurisdiction of NCT of Delhi without prior permission of the court nor shall he indulge in any kind of criminal activity.

(b) He shall also not tamper with any evidence or contact any witnesses.

(c) He shall attend the court on every date of hearing or as directed by court.

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Accordingly, the bail application under Section 439 Cr.P.C of accused Mohd. Shariq stands disposed off accordingly.

Copy of this order be e-mailed to the Ld. Counsel for applicant/accused, Ld. Prosecutor and the I.O.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 04.03.2021

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