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

+ **BAIL APPLN. 2078/2021**

SHIVA

..... Petitioner

Represented by: Mr. Pritish Sabharwal, Advocate.

Versus

STATE

..... Respondent

Represented by: Mr. Saleem Ahmed, Spl.PP for State
with SI Ravi Punia, PS New
Usmanpur.

+ **BAIL APPLN. 2943/2021**

NITIN

..... Petitioner

Represented by: Mr. Pritish Sabharwal, Advocate.

Versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Mr. Saleem Ahmed, Spl.PP for State
with SI Ravi Punia, PS New
Usmanpur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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13.09.2021

The hearing has been conducted through Physical Mode.

BAIL APPLN. 2078/2021

BAIL APPLN. 2943/2021

1. By these petitions, the petitioners – Shiva and Nitin seek bail in case FIR No.134/2020 under Sections 147/148/149/308 IPC and Sections 25 and 27 Arms Act registered at PS New Usmanpur.

2. Learned counsel for the petitioners contends that at the place of incident i.e. Gali No. 13, Brahm Puri, pelting, firing took place between both the sides and though initially, FIR No.87/2020 was registered, wherein number of accused were arrested, however on the statement of Azim, the injured, FIR No.134/2020 was registered in which the victims/ witnesses in FIR No.87/2020 are accused. He states that the accused Nitin is not even identified in the CCTV footage. As regards Shiva, who was holding the pistol in his hand, he was only seen firing in the air; no gunshot injury has been received to the complainant or any other victim on the side of the complainant. Further, it is also not clear whether the petitioner fired or was only holding the weapon in the air for the reason, the ten used cartridges recovered from the spot have also been attributed to the accused in FIR No.87/2020. Learned counsel for the petitioners states that all the accused have already been released on bail in FIR No.87/2020 except one, that is, Nasir @ Arbaaz Hussain and thus, even on parity, the petitioners are entitled to bail. Co-accused Surender Soni @ Shyam has also been granted regular bail in BAIL APPLN. No. 2534/2021 by this Court vide order dated 18th August, 2021.

3. Learned Special Public Prosecutor for the State opposing the bail applications submits that the two petitioners are very much seen in the CCTV footage and are identified by the beat Constable. Shiva is seen with the pistol and since pursuant to the unlawful assembly, injury was caused to Azim, no case for bail is made out. Further, the petitioners were declared Proclaimed Offender ('PO').

4. The above noted FIR was registered on the statement of Azim, which

was recorded on 6th March, 2020, wherein he alleged that on 25th February, 2020, he was present at his house. At about 03.00 AM, he heard a commotion outside, when he saw a mob of around 20-25 people were moving towards Matin Masjid and chanting slogan 'Jai Shree Ram'. They were damaging property, pelting stones and firing bullets. Meanwhile, a stone hit his head. Due to the spread of riots, he did not come out of his house but when his pain aggravated, he was admitted to RML Hospital on 27th February, 2020 and later, he was operated and thus, could give his statement only on 6th March, 2020. The nature of injury received to the victim has been opined to be grievous.

5. As regards the petitioners being declared PO, learned counsel for the petitioners states that the petitioners were arrested from their residence, no notice were issued, nor any raid was conducted and the petitioners were not aware that they have been involved in the FIR in question. Learned counsel for the petitioners further states that the petitions challenging the petitioners being declared as PO is already pending before this Court.

6. As per the status report, notice under Section 160 Cr.P.C. was given on 11th August, 2020, which were received by their respective brothers, however, they failed to appear and thus, non-bailable warrants were taken. As the same could not be executed, fresh non-bailable warrants were taken and finally proceedings under Section 82 Cr.P.C. were initiated.

7. Undoubtedly, the petitioners were declared proclaimed offender on 24th February, 2021, whereafter they were arrested on 2nd April, 2021. Petitioner Shiva was granted interim bail by this Court during the pendency of these petitions and there is no allegation that he misused the said

concession.

8. Considering the material placed on record and the fact that the injury received to Azim was not by a gunshot but by a stone, this Court deems it fit to grant regular bail to the petitioners.

9. It is, therefore, directed that the petitioners be released on bail on their furnishing personal bond in the sum of ₹50,000/- each with two surety bonds of the like amount to the satisfaction of the learned Trial Court/ Duty Magistrate concerned, further subject to the conditions that petitioners will also not leave country without the prior permission of the Court concerned and in case of change of the residential address and/ or the mobile number of the petitioners or sureties, the same will be intimated to the Court concerned by way of an affidavit. The petitioners are also directed to mark their presence in PS New Usmanpur on every first Sunday of the month.

10. Petitions are disposed of.

11. Needless to note that any observation made herein above is only for the purpose of coming to a prima facie conclusion in relation to the grant of bail and the same will have no bearing on merits during the course of trial.

12. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

SEPTEMBER 13, 2021

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