

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

+ Bail Application No. 1778/2008

% Date of reserve : 29.04.2009
Date of decision: 11.05.2009

SATISH ...APPLICANT
Through: Mr.S.S.Chadha, Advocate

Versus

STATE (NCT OF DELHI) ...RESPONDENT
Through: Mr.Arvind K.Gupta, Advocate

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers No
may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be Yes
reported in the Digest?

MOOL CHAND GARG, J.

1. This is a bail application filed under Section 439 read with Section 482 Cr.P.C. seeking directions from this Court to release the applicant on bail in case FIR No. 512/2006 dated 30.05.2006 under Sections 302/201/34 IPC registered at Police Station Sangam Vihar, Delhi. The applicant is in judicial custody for more than two years
2. The applicant first approached the Additional Sessions Judge for the grant of bail but the Additional Sessions Judge vide order dated 13.05.2008 dismissed his bail application holding that the accusations against the applicant are very serious and hence, no ground for grant of bail is made out.

3. Briefly stating, the facts of this case are that on 30.05.2006 information was received that a naked dead body of a lady was lying in a jungle near Nahari Baba Mandir whose face has been burnt. This information was recorded as DD No. 22A and Inspector Jai Singh, SHO P.S. Sangam Vihar proceeded at the spot where he found a naked dead body and its face was crushed. A bottle was found inserted in the vagina of the dead body. On these facts, the present FIR was registered.
4. On the body of the deceased name of one Bunty was found tattooed, who was traced out by the police and told the police that at the relevant time, the deceased became friendly to Jai Prakash and was moving with him. On the basis of the aforesaid information Jai Prakash was interrogated and the photograph of the deceased was shown to him. According to him, on 30.05.2006 he left the deceased near L-Block where she went along with two boys in a TSR. He gave the description of those boys and informed that word "Master was written on the back side of the TSR and tapes are attached on the back side of the TSR". Police traced out this TSR belonging to one Mohd. Kesar Ansari @ Master. During the course of interrogation of Kesar Ansari, it transpired that he had let out his TSR No. UP-16L-8676 to one Riyaz Khan. Investigating Officer apprehended accused Riyaz Khan. One Manoj was also apprehended during the course of investigation. The disclosure statement of Riyaz Khan was recorded on 30.05.2006, who stated that at about 12 noon

when he was standing with Satish, the present applicant, Sheetal @ Sarita (deceased) came on motorcycle. The deceased agreed for sexual intercourse in consideration of Rs.400/- and she along with accused Riyaz Khan and Satish sat in the TSR and they reached in room No. G-763, Sangarm Vihar where accused Manoj was already present. They took her inside the room and sent Satish for bringing those liquor and food. It is alleged that present applicant took TSR while accused Riyaz Khan told accused Manoj to sit outside the room so that he may have sex with Sheetal. Thereafter, accused Riyaz Khan had sex with Sheetal by using a condom. It is alleged that accused Riyaz Khan threw this condom inside the room itself. Thereafter, he called Manoj for having sex with her but accused Manoj could not perform sex. In the meantime, present applicant also came with the food and also brought a liquor bottle. All of them consumed the liquor. Under the influence of liquor, Sheetal started abusing them and public gathered there. On this accused Manoj slapped Sheetal and Sheetal threatened to take legal action against them. On this accused Manoj and present applicant took Sheetal in the three wheeler towards the jungle behind Nahari Baba Temple and thereafter, took off her clothes. It is alleged that accused Riyaz Khan and the applicant caught legs of Sheetal while accused Manoj crushed her head with a heavy stone. Thereafter, they poured some liquor on her clothes and set the same on fire. All this was done so that the deceased

remains unidentified. It is alleged that the accused Riyaz Khan inserted the liquor bottle in the vagina of the deceased. It is also alleged that accused Manoj also made the similar disclosure. At the instance of accused Riyaz Khan the condoms used for having sex with deceased were also recovered. The clothes of the deceased were also recovered at the instance of accused Riyaz Khan. His own clothes i.e. pant and shirt having blood stains were also got recovered by him from the house of accused Manoj. Accused Manoj also got recovered his own cloths i.e. shirt and jeans from his room having blood stains. They also pointed out the place of offence.

5. As far as the present applicant is concerned, it is the case of the prosecution that on 30.6.2006 he was arrested from house No.G-477, old No.G-161, Sangam Vihar. He made a confession about the offence and got recovered his clothes i.e. T-shirt and pant which he was wearing at the time of commission of offence. After the arrest of the accused persons, the charge sheet was filed against all the accused persons under Sections 302/201/34 IPC.
6. It is submitted by the applicant that the charge sheet does not make out a case against the applicant. It is stated that the case of the prosecution is based on surmises and conjectures.
7. It is pertinent to note that the bail application was moved before the Additional Sessions Judge a year back and was kept pending on one pretext or the other and was dismissed only

on 13.05.2008. It is submitted that the applicant had no motive of killing the deceased as he had no grievance against her. Moreover, the deceased was drinking with the other co-accused and the scuffle that took place was in the absence of the applicant at the house of the other co-accused i.e. Manoj, which shows the proximity between them. It is also submitted that the story fabricated by the police does not stand on its own leg in the test of legal parlance. They themselves say that the deceased was unconscious when the applicant and the other co-accused, Riyaz Khan caught her legs when Manoj hit her with a stone on the face so as to kill her and after that Riyaz Khan also hit her with the stone so as to smash her face. In all probability and fairness it is improbable to believe as to why someone would hold the legs of an unconscious person when she is lying motionless. It is also submitted that as per the FSL report annexed with the charge sheet, there is no blood on the clothes of the applicant of the deceased, which fact is not appreciated by the Additional Sessions Judge, who in the impugned order said that the condom was used by the applicant while doing intercourse, which is factually incorrect as according to the police it was Riyaz Khan who twice had intercourse with the deceased using the condoms. It is also submitted that the applicant is a respectable citizen of this country permanently residing within the territorial jurisdiction of this Court and having deep roots in the society, thus, there is no likelihood of the applicant either fleeing away from

justice or absconding or hampering the trial and therefore, in view of above circumstances, this Court should grant the relief prayed for by the applicant. The applicant also undertakes not to influence any witness. It is also submitted that he applicant is 22 years old and does not have any previous antecedents and is in judicial custody for more than two years.

8. As per the prosecution Riyaz Khan along with Satish and Manoj after having taken the TSR No.UP 16 L 8676 and took the deceased in that TSR to Sangam Vihar, where sexual intercourse was committed on the deceased. IN this regard the prosecution has relied upon the statement of Kesar Ansari and Jai Prakash.
9. Second circumstance relied by the prosecution is the recovery of blood stained clothes of the applicant at his instance which as per the FSL report had blood group 'A' whereas the blood group of the deceased is 'B'.
10. The third circumstance is regarding the disclosure statement of the applicant resulting in discovery of dry blood at the place of incident on which the group of blood has not been detected, in fact the Investigating Officer had collected the 'earth material' on 31.5.2006 which is Exh.P2 and same was sent for FSL examination.
11. As far as the recovery of TSR at his instance is concerned, it is the part of the investigation report that they had found the owner of the vehicle who informed them that he had let out the vehicle to Riyaz, before the arrest of the applicant.

12. The fourth circumstance against the applicant is the recovery of condoms, which as per FSL report, had semen of 'A' blood group, which is also the blood group of the applicant. As far as recovery of condoms Ex.PW6/B containing semen of 'A' blood group is concerned, it is the prosecution version that these condoms were recovered at the instance of Riyaz Khan.
13. However, the last circumstance relied by the prosecution is the last seen evidence which has come in the statement of Jai Pal, who saw all the three accused taking the deceased in the TSR driven by one young man accompanied with two persons at about 3.30 p.m. before her death.
14. In the view of abovementioned facts and circumstance, no doubt some of the circumstances may not conclusively prove the role of the applicant in commission of the murder of the deceased but the last seen evidence is required to be scrutinized at the stage of framing of the charges which are yet to be framed and the evidence of relevant witnesses which are yet to be recorded. It is not appropriate to release the applicant on bail at this stage.
15. Bail application is accordingly dismissed, at this stage.

MOOL CHAND GARG, J.

May 11, 2009.
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