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THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1009/2011

Date of Decision: 30.01.2012

DINESH KUMAR MITTAL

..... Petitioner

Through: Mr. D. Roy Chaudhary, Senior
Advocate with Mr. D. Moitra and Mr.
Rajesh Anand, Advocates

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Fizani Husain, APP for State
with Inspector Sanjay Dutt, SI
Mahender Singh. 00
Mr. K.K. Manon and Mr. Vibhor
Garg, Advocates for complainants

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. The petitioner seeks grant of bail under section 439 Cr. P.C. in FIR No. 152/2008 under section 302/120-B/34 IPC, P.S. Kalkaji.
2. The petitioner is facing trial with co-accused persons in this case on the allegations that on 7th April 2008 one businessman Arun Gupta was shot dead by three unknown motorcycle borne assailants near his residence. He died instantly. Having regard to the broad day light murder in the market, the investigation was transferred to Special Cell. During investigation, on the basis of a secret information and analysis of the mobile phone records, one person namely Mohd. Pervez was arrested on 12th April, 2008 who disclosed that he had managed the murder of Arun Gupta with the help of other associates. On the basis of his disclosure, his associate Mohd. Harun was arrested on the same

day. The later admitted his involvement in the said murder. He disclosed that since 2000 he is working with the father of the petitioner in his property dealing business and that after his death he continued working with the petitioner. He disclosed that in January, 2008 his employer/petitioner told him about his property dispute with his sister Sadhna and brother-in-law Arun Gupta and for which the petitioner asked him that he wanted to eliminate both of them. He disclosed that on the directions of the petitioner he introduced him one of his close associates and also arranged a meeting. That associate demanded a sum of Rs.15.00 lakh for killing Sadhna and Arun Gupta, but the deal was finalized for a sum of Rs.10.00 lakh. That associate namely Afroz Pahalwan in turn contacted his friend Mohd. Pervez for that purpose and with the help of their other associates they managed the murder of Arun Gupta for Rs.10.00 lakh. The petitioner was arrested on 13th April 2008 and admitted having hired Mohd. Pervez and Afroz Pahalwan through his employee Mohd. Harun for execution of his sister Sadhna and brother-in-law Arun Gupta. Subsequently, other accused persons were also arrested. Having traced the details of the mobile phone calls, the talks between the accused persons were established. The complaint was made by none else, but by the mother and sister of the petitioner against him to the police.

3. The petitioner with his co-accused is facing trial in this case. The said case is at the stage of closing of prosecution evidence. The statements of as many as 56 prosecution witnesses have already been recorded. Statement of only two witnesses including that of the I.O. remain to be examined by the trial Judge. The main contention of the counsel for the petitioner was that the petitioner is facing trial and is in J.C. for the last four years and the statements of all the public witnesses have already been recorded and the ASJ has wrongly recorded that the chain was still not complete. It was submitted that the

petitioner was earlier granted interim bail and had surrendered in time. It was also submitted that since he was already granted bail and that the petitioner did not misuse the same, he was entitled to continue to remain on bail.

4. On the other hand it was submitted by learned counsel for the complainant as also by the learned APP that two applications for regular bail of the petitioner have already been dismissed by this Court respectively on 17.11.2008 and 06.01.2010. It was submitted that only the statement of the IO and that of expert of CFSL remain to be recorded. It was also submitted that the delay, if any, in conduct of trial was not on the part of the prosecution, but, mainly on account of one or the other counsel for the accused persons being not available or seeking adjournment from the trial court. It was submitted that the mother of the petitioner in her statement under section 164 Cr.P.C. supported the prosecution case and also to the large extent in her statement made in the court. The prosecution witnesses Sadhna Gupta, sister of the petitioner and PW-56 Deen Dayal Verma also fully supported the prosecution case. It was next submitted that Sadhna Gupta had also complained of threats from the petitioner and was provided security by the Court.

5. The bail application filed by the petitioner before the court of ASJ was dismissed vide order dated 22nd April, 2010. While dismissing the application, the ASJ had rightly recorded that it was not desirable to comment upon the testimonies of PW-18, PW-19 as that would seriously prejudice not only the accused persons but also the prosecution. It was also observed that assuming that there were certain variations, improvements or embellishments in the testimonies of PW-18 and PW-19, it would not be expedient to decide whether such variations, improvements or embellishments are natural, innocuous or afterthought. It was also observed that there was no exceptional ground for departing from the usual procedure of trial and give a verdict on the innocence

or complicity of the accused persons midway during the trial. It was in these backgrounds that the trial court had reiterated that complete chain of events that led to the commission of offence was yet to be fully established on record.

6. The learned counsel for the petitioner took me through certain parts of the statements of PW-21 Sadhna Gupta, PW-56 Deen Dayal Verma and also PW Smt. Kanta Mittal, mother of the petitioner. The meticulous analysis of the statements of these prosecution witnesses at this stage was not desired while deciding the application for bail as that is neither in the interest of the prosecution nor that of the accused/petitioner. However, having gone through the statements of these witnesses as also the statement of PW-18 Satish Kumar, PW-21 and PW-56, I do not see that they have absolved the petitioner. Even PW Kanta Mittal, who is the mother of the petitioner who had given statement under section 164 Cr.P.C. against the petitioner did not absolve him in her statement in the Court.

7. The plea that the petitioner was in custody for four years and was so entitled to be released on bail is entirely untenable. Having regard to the serious nature of the offences and large number of witnesses of the prosecution, it cannot be said that the trial has protracted unreasonably or inordinately. In this regard it is noted that the ASJ had also noted that the proceedings were relatively on good pace, but since there were several counsels appearing for the six accused persons and one or other of them was unavailable invariably, the trial got protracted. The delay, if at all there is, cannot be contributed to the prosecution.

8. The plea that he was already granted interim bail and did not abuse the same and was so entitled to be released on bail, is also not tenable. Reliance placed by the counsel in support of these contentions on the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors., AIR**

2011 SC 312 is entirely misplaced. That was a case relating to anticipatory bail wherein it was held that if after evaluating the averments and accusation available on record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the public prosecutor. After hearing the public prosecutor the court may either reject the bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of bail. The public prosecutor or complainant would be at liberty to move the same court for cancellation or modifying the conditions of bail any time if liberty granted by the court is misused. The bail granted by the court should ordinarily be continued till the trial of the case. It was held that the order granting anticipatory bail for limited duration and thereafter directing the accused to surrender and apply before a regular bail is contrary to the legislative intention and the judgment of the Constitution Bench in the case of **Gurbaksh Singh Sibbia and Others Vs. State of Punjab (1980) 2 SCC 565 : (AIR 1980 SC 1632)**.

9. As noted above, though this was a case of anticipatory bail, but it was also laid that ground for refusal of anticipatory bail would necessarily depend upon the facts and circumstances of each case.

10. Similarly, reliance placed upon the case of **Aman Gaur Vs. State** in bail application No. 700/2011, decided on 23rd December 2011 by this Court was also misplaced. Taking note of the decisions of the Supreme Court it was held that while exercising the discretion for grant of bail the court has to make a prima facie view of the matter and judicially exercise that discretion rather than doing critical analysis and judging the credibility of the witnesses. In any case, that was a case of consideration of bail application at the stage of framing of charges and not like the instant case which is on the verge of conclusion of recording of prosecution witnesses.

11. Similarly, reliance placed on the case of **State of Kerala Vs. Raneef AIR 2011 SC 340** is also misplaced. That was a case in which the trial was yet to commence and there was no allegation that the respondent was one of the assailants.

12. The submission of learned counsel for complainant that two applications of regular bail have already been rejected by this court, as noted above, was not controverted by the learned counsel for the petitioner. Likewise, his submission that even the SLP seeking interim bail by the petitioner was dismissed by the Supreme Court, was also not controverted. Likewise, it also could not be controverted that there were several Advocates representing the accused persons before the trial court and that many a times adjournments were sought on account of non availability of one or the other counsel. Having regard to the fact that most of the witnesses have already been examined and only IO and CFSL expert remain to be examined and the prosecution case was likely to close very shortly, making critical analysis and assessment of the evidentiary value of the prosecution witnesses was uncalled for for various reasons. It was also not controverted that on the complaint of Sadhna Gupta police protection was granted to her by the trial court.

13. The Supreme Court has laid down parameters for consideration of bail applications in the case of **State of U.P. Through CBI Vs. Amarmani Tripathi** with **State of U.P. Through CBI Vs. Madhumani Tripathi (2005) 8 SCC 21** observing as under:

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment

*in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behavior, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see *Prahlad Singh Bhatt v. : NCT, Delhi* 2001CriLJ1730 and *Gurcharan Singh v. :State (Delhi Administration)* 1978CriLJ129 . While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. : Rajesh Ranjan*, 2004CriLJ1796 :*

"The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted

particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

b. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

c. Prima facie satisfaction of the court in support of the charge. (see Ram Govind Upadhyay v. : Sudarshan Singh, 2002CriLJ1849 and Puran v. : Ram Bilas 2001CriLJ2566 .")

19. This Court also in specific terms held that:

"the condition laid down under Section 437 is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the

accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

14. In view of my discussions above and in the backdrop of the gravity and seriousness of the offences, I am not inclined to admit the petitioner on bail. Hence the bail application is dismissed.

M.L.MEHTA, J

JANUARY 30, 2012

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