

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

Judgment delivered on : December 14, 2015

+ **BAIL APPLN. 2582/2015**

KAMAL

..... Petitioner

Through: Mr.M. Tripathi & Mr.A.K. Singh,
Advocates.

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. G.M. Farooqui, Additional Public
Prosecutor for the State with
Inspector Ram Niwas, Police Station
Sarita Vihar, New Delhi
Mr.Nikhil Ranjan Ahuja, Advocate
for the complainant.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. Aggrieved by the order dated 19.10.2015 passed by the learned Additional Sessions Judge-02, South-East, Saket Courts, New Delhi the petitioner has filed the present petition under Section 439 of Code of Criminal Procedure, 1973 seeking bail in a case registered vide FIR No. 493/15 under Section 364/302/201/342/506/323/34 of IPC at Police Station Sarita Vihar, Delhi.

2. The present FIR is based on the complaint dated 20.06.2015 made by Mr. Rama Nand Chaudhary (hereinafter referred to as the complainant) stating that his elder son Nitish did not return home and he was lastly seen by a boy named Titoo on 06.06.2015 at about 12.00 PM (at night), who disclosed that Sonu Nagar, Rohit Thakur, Yogesh Dhudiya and Sonu and his brother Thapal were seen with Nitish (son of the complainant). The complainant has alleged that due to quarrel between his son and Sonu Nagar and his brother Thapal, two years back, they became enemy of his son Nitish and confidently alleged that Sonu Nagar and his brother Thapal and their associates Yogesh Dhudiya and Rohit had kidnapped his son and he fears for his life and property from the aforesaid persons.

3. Mr. M. Tripathi, Counsel for the petitioner contended that the petitioner has been falsely implicated in the present case and submitted that even for the sake of argument, if the prosecution case is admitted as gospel truth, at best the petitioner can be charged with the offence punishable under Section 201 of IPC. Further, counsel for the petitioner has narrated a different version of the case. Counsel for the petitioner submitted that though the charge sheet in this case has

been filed but the dead body of the deceased has not been recovered. It is further submitted that the deceased Nitish was a bad character of the area, habitual offender and is involved in a number of criminal cases and in one case he was declared P.O. and in order to escape from the clutches of law, is pretending to have died and he has falsely implicated the petitioner.

4. Counsel for the petitioner further contended that the petitioner is a young boy of 23 years and is in custody since 4th July 2015. It is further contended that the petitioner has clean antecedents and there is no previous history of any criminal case against him, therefore, the petitioner ought to be granted bail in the aforesaid case.

5. To oppose the contentions raised by learned counsel for the petitioner, Mr. G.M. Farooqui, learned Additional Public Prosecutor for the State submitted that the petitioner is charged with the offence punishable under Section 302 of IPC therefore, while taking into consideration the gravity of the offence, the petitioner be not released on bail.

6. The State has also filed a status report, whereby it is submitted that the accused persons have confessed the commission of the

offence and during investigation, they also stated that they threw the dead body of Nitish in Agra Canal after murdering him in the house of accused Sonu Nagar. It is further stated that statement of the eye-witness – Sourabh @ Titoo is also recorded under Section 164 of Cr. P.C. and he has supported the prosecution case. The roll attributed to the petitioner – Kamal in the present case is that he had directed his brother and other accused persons to throw the dead body of deceased Nitish in Agra Canal. It is also stated that the petitioner had cleaned the blood from the room with the help of Golu and destroyed other evidences from the room. The status report has confirmed that during inspection, a blood stained thumb impression was found on the wall of the inner side of the room and same was lifted by the CFSL team and the thumb impression matched with the finger prints of the deceased. It is further reported that the impression found on the wall of the room of the accused persons has been matched with the impression of the deceased.

7. It is further submitted in the status report that the investigation in this case has been completed and the charges under Sections 302/342/323/506/201/34 of IPC have been framed against the

petitioner and the case is now fixed for recording evidence on 16th, 17th and 18th March 2016.

8. I have heard the submissions made by learned counsel for the petitioner and the learned Additional Public Prosecutor for the State and also gone through the material placed on record.

9. After considering the contents of the present petition as well as the submissions made by counsel for the petitioner and learned Additional Public Prosecutor for the State, this Court observes that there is statement of an eye-witness against the petitioner and the confession of the accused persons about commission of the offence, in which it is stated that the accused persons have thrown the dead body of Nitish in Agra Canal. It is also observed that as per the FSL report, the thumb impressions matched the finger prints of the deceased and the impression found on the wall of the room of the accused persons has been matched with the impression of the deceased. The petitioner – Kamal in the present case is alleged to have directed his brother and other accused persons to throw the dead body of deceased Nitish in Agra Canal and he had cleaned the blood from the room with the help of Golu and destroyed other evidences from the room.

10. So far as the different version of petitioner's case is concerned, the same is not a subject matter of the bail at this stage and the same can be adjudicated during trial after leading cogent evidence and the court has to inquire, whether any prima facie case is made out against the petitioner or not.

11. This Court also observes that though the dead body of Nitish has not been recovered, there is confession of the accused persons that they threw the dead body of Nitish in Agra Canal. Accordingly, the charge under Section 302 of IPC is framed against the petitioner and other co-accused persons. The charge of cleaning the blood from the room with the help of Golu and destroying other evidences from the room is also levelled against the present petitioner.

12. After careful scrutiny of the facts and circumstances of the present case and the statement of the eye-witness recorded under Section 164 of Cr. P.C., this Court does not find this case to be a fit case for grant of bail at this stage, especially when the trial is at an initial stage and the tampering of the evidence also cannot be ruled out.

13. In view of the aforesaid facts and circumstances of the present

case, this Court is of the opinion that the petitioner – Kamal does not deserve the concession of bail in this case, at this stage. Accordingly, the present application filed by the petitioner – Kamal is dismissed at this stage.

14. It goes without saying that the expression of any opinion made hereinbefore shall not be treated as an expression on the merits of the case.

15. In view of the aforesaid observations, the present petition stands disposed of.

(P.S.TEJI)
JUDGE

DECEMBER 14, 2015
pkb