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

+ BAIL APPLN. 632/2016

VIRENDER SHARMA

..... Petitioner

Through: Mr.Ashok Drall, Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with Inspector Dinesh PS
Kanjhawala

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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03.05.2016

1. The petitioner is seeking regular bail in case FIR No.124/2011 registered under Sections 394/397/302/201/411/34 IPC at PS Kanjhawala, Delhi.
2. On behalf of the petitioner Mr. Ashok Drall, Advocate has submitted that the petitioner is in custody in this case since 5th June, 2011 and the trial has not been concluded till date. Learned counsel for the petitioner submits that the petitioner in this case has been arrested on the basis of disclosure statement and a bicycle allegedly belonging to the deceased has been shown to have been recovered from the petitioner which is a very common item available in the market and only on that basis petitioner cannot be allowed to be detained for such a long time. Learned counsel for the petitioner has also contended that this case is based on circumstantial evidence and the

evidence adduced by the prosecution is inadmissible as nobody has seen the deceased counting the money. It is also submitted by learned counsel for the petitioner that location of the mobile phone of the petitioner is also insignificant in the facts of this case. Learned counsel for the petitioner also urged that material witnesses have already been examined by the prosecution and only the police officials are left to be examined hence there is no apprehension of the prosecution witnesses being influenced in case the petitioner is released on bail.

3. Detailed status report has been filed by the State wherein the role attributed to the petitioner is that when co-accused Sanjay killed the deceased with an axe, the petitioner was putting his feet on the back of the deceased. It is further submitted that apart from cash of ₹40,000/-, one mobile phone and one bicycle was also taken away and the said bicycle was recovered from the possession of this petitioner Virender from his house at Ladpur. Further on the date of the incident both the accused were seen at the roof of the house till 10.30 p.m. and they remained in touch with each other through their mobile. Not only that co-accused Sanjay changed his sim and the petitioner was in touch with him on his new mobile number and there is enough material to connect the petitioner with the murder of the Ram Lakhan.

4. I have considered the rival contention. The petitioner himself has mentioned that out of 34 witnesses 25 witnesses have been examined. Thus, the petitioner cannot contend that trial is not likely to be concluded shortly. Bicycle of the deceased has allegedly been recovered from the possession of the petitioner from his house.

5. In the case **Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Anr. (2004) 7 SCC 528** it has been held as under:

“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 of 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 Vs. Sudarshan Singh and others (2002 (3) SCC 598) and Puran Vs. Rambilas and another (2001 (6) SCC 338).”

6. The mere fact that petitioner is in custody since June, 2011 in itself is not sufficient to enlarge him on bail for the reason that other factors regarding gravity of the offence, nature of the supporting evidence also need to be considered. The call detail record of the petitioner and that he had been in touch with his co-accused on his new mobile number as well also needs to be considered for the purposes of considering his prayer.

7. Taking into consideration all the facts and circumstances, I do not find it to be a fit case to enlarge the petitioner on bail specially when some of the police officials are left to be examined as prosecution witnesses and trial is likely to be concluded shortly.

8. The application is dismissed.
9. Any observations made hereinabove for the purpose of dealing with the contentions raised during hearing of the bail application shall not be deemed to be an expression on merits of the case.

PRATIBHA RANI, J.

MAY 03, 2016
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