

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

Date of Decision: November 24th, 2016

+ **BAIL APPLN. 2284/2016**

NATHU

..... Petitioner

Through Mr.Khalil A. Ansari, Mr.Mohammad
Akhtar, Mohd. Sulaiman Khan and
Mr.Arif Shakeel, Advs.

versus

THE STATE GOVT. OF NCT OF DELHI Respondent

Through Mr.Ashish Dutta, APP.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT

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P.S. TEJI, J.

1. By this petition filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.) the petitioner seeks regular bail in FIR No.554/2013 under Section 302/201/411/120B/34 of IPC, Police Station Sangam Vihar, New Delhi.

2. The facts, in brief, are that on 23.12.2013 on receipt of DD no.10A, SI Birender Singh along with Ct. Rajender reached J-Block hills, behind the forest of Govt. School where a charred dead body of a male person was found. The dead body was having injury marks on

his head. One plastic bottle half burnt and one empty quarter bottle of liquor were found near the dead body. One pair of Adidas shoes and one blood stained stone was also found from the spot. The spot was photographed and inspected by the crime team. The dead body was sent to the mortuary. The FIR was registered under Section 302/201 IPC.

3. On 25.12.2013, one Shiv Singh came to the police station and informed that his brother Satish had not come to the house since 22.12.2013 who was working with Banne Singh in a vegetable shop and that his brother was wearing Adidas shoes. After seeing the dead body and clothes of the deceased, Shiv Singh identified the dead body as of his brother Satish. After conducting post mortem on the dead body of the deceased, the dead body was handed over to his relatives. During investigation, Bane Singh informed that the deceased was having mobile phone and on 22.12.2013 at about 07.45 p.m., deceased Satish gave his wallet to Banne Singh and told him that he would come after an hour after attending a party. On analyzing the mobile phone number of the deceased, it was revealed that last call on his number was made from the phone of Asha Devi. On questioning Asha Devi, it was found that the mobile phone in her name was being used by her son Nathu Ram. During interrogation, accused/applicant Nathu Ram confessed his guilt that he along with his associates Arvind and Rizwan committed the murder of Satish and burnt his dead body by pouring petrol over it. Accused persons were arrested. Stolen mobile phone belonging to the deceased was recovered from

accused Mohd. Rizwan @ Cheetu. One knife used in commission of crime was recovered at the instance of accused Arvind Chaudhary. After completion of investigation, charge sheet was filed in the Court.

4. The charge has been framed against the accused persons including the petitioner/applicant and the prosecution evidence is still in progress.

5. Arguments advanced by the learned counsel for the petitioner as well as learned Additional Public Prosecutor for the State were heard.

6. Argument advanced by the learned counsel for the petitioner is that the present case is based on circumstantial evidence and no circumstance has been placed on record by the prosecution which could connect the petitioner with the commission of the crime of the present case. It was submitted that it was not the petitioner who had made the last call on the mobile phone of the deceased rather it was vice versa. Moreover making or receiving a call cannot be termed as a circumstance against the petitioner. The prosecution has not been able to prove the circumstance that deceased told Banne Singh that the petitioner Nathu Ram was coming and the deceased would go with him to a party. It was further submitted that there was no use of petrol in the alleged crime as the burnt plastic bottle found at the spot was found having kerosene smell. Even the CFSL expert in his report has submitted that the residue of kerosene/diesel/petrol could not be detected in bottle and cloth pieces of deceased. There was no evidence that deceased was taken by the petitioner on his motorcycle.

It was further submitted that the trial is likely to take a long time as only six prosecution witnesses have been examined so far.

7. On the other hand, learned APP for the State has argued that the petitioner/accused is the main accused of the present case who along with his associates has committed the heinous crime of murder of the deceased. It was further submitted that severity of the crime is to be seen at the time of considering the bail application of the petitioner as he not only committed the murder, but also committed destruction of evidence by burning the dead body of the deceased. It was further submitted that there is likelihood of absconding of the petitioner in case he is released on bail.

8. From the facts brought on record, this Court is of the considered opinion that the present case is based on circumstantial evidence. The argument advanced on behalf of the petitioner that there is no evidence to prove any circumstance against the petitioner, is a matter of trial and no comment on the same can be made at this stage. The circumstances so put forth by the prosecution against the petitioner/accused and his co-accused persons can be answered only after conclusion of evidence. The testimony of prosecution witnesses so examined before the trial court cannot be read in piece meal. It is the prerogative of the trial court to evaluate the evidence and that is too at the time of conclusion of trial.

9. The Hon'ble Apex Court in the case of ***Vaman Narain Ghiya v. State of Rajasthan AIR 2009 SC 1362*** observed as under :

“While considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged. Existence of a prima facie case is only to be considered. Elaborate analysis or exhaustive exploration of the merits is not required. (See Niranjana Singh v. Prabhakar Rajaram Kharote) Where the offence is of serious nature the question of grant of bail has to be decided keeping in view the nature and seriousness of the offence, character of the evidence and amongst others the largest interest of the public. (See State of Maharashtra v. Anand Chintaman Dighe and State v. Surendranath Mohanty).”

10. It has been seen that in several cases, the evidence available with the prosecution i.e. police officials and formal witnesses has not been put forward by the prosecution before the trial court. In the present case also, it has been submitted that the petitioner was arrested on 26.12.2013 and the trial is pending since 2015 but only six witnesses have been examined till now. This Court is of the considered opinion that in such cases where the evidence of prosecution is formal in nature i.e. of police officials/officers and formal witnesses should be brought forth before the court as soon as possible so as to avoid any delay in disposal of the case.

11. In view of the afore-mentioned facts and circumstances, specific role attributed to the petitioner/accused and the seriousness of offence, this Court is of the considered opinion that the petitioner does not

warrant concession of bail.

12. However, the trial court is directed to conclude the trial as expeditiously as possible.

13. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

14. In the light of the aforesaid, the bail application filed by the petitioner is dismissed.

NOVERMBER 24, 2016
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P.S.TEJI, J