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

+ **BAIL APPLN. 1626/2017**

NASRUDDIN

..... Petitioner

Through: Mr.Arun Nischal and Ms.Shuchi
Nischal, Advocates.

versus

STATE

..... Respondent

Through: Ms.Rajni Gupta, APP for the State
with SI Dinesh Dahiya, PS Sultan
Puri.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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24.11.2017

1. By way of this bail application filed under Section 439 Cr.P.C. read with Section 482 Cr.P.C., the petitioner is seeking regular bail in case FIR No.437/2016 under Section 302/326 IPC, PS Sultan Puri, Delhi on the following grounds:-

- (i) All the prosecution witnesses except the Investigating Officer have been examined.
- (ii) There are material discrepancies in the statement of prosecution witnesses.
- (iii) The public witnesses have not identified the petitioner.
- (iv) The petitioner has been in judicial custody for more than 1½ year.
- (v) The petitioner is of very young age and having clean antecedents.

2. Vide order dated 16th May, 2017, the learned ASJ has declined the prayer of the petitioner to be released on bail after recording the submissions made on behalf of State as under:-

'Ld. Addl.PP has opposed the application on the ground of involvement of applicant in a very serious offence in which a young boy lost his life and another suffered sharp injuries. It is stated that due to meagre source of light at the spot, the complainant got confused about the complexion of assailants. Further his statement recorded during trial cannot be assessed for deciding the bail application. The DNA of blood of deceased matching with the DNA of blood found on the cloths of applicant as well as the knife got recovered by him, clinch the issue of his involvement. It is denied that police has destroyed any evidence in favour of the applicant or that the investigation has not been conducted in just and fair manner.'

Undoubtedly, the divergent version of complainant to police regarding complexion of assailants is perturbing but the scientific evidence indicating the presence of applicant at the spot at the time of incident, which he has not been able to explain coupled with the fact that no grave factor motivating the complainant or the family members of deceased to falsely implicate the applicant in this case in suppression of actual culprit/s, having been put forth, this Court is not inclined to favour the applicant with grant of bail. The application, therefore, is dismissed.'

3. Today, learned APP for the State has placed on record the Previous Conviction/involvement report in respect of the petitioner as per which he is also involved in other cases also i.e. FIR No.406/2015 under Sections 392/394/397/34 IPC, FIR No.1114/2015 under Sections 25/54/59 Arms Act PS Rajouri Garden and FIR no.802/2015 under Sections 392/394/34 IPC, PS Punjabi Bagh.

4. In a recent report ***Pratapbhai Hamirbhai Solanki vs. State of Gujarat***

and Anr. 2012 (1)) Scale 237, the Supreme Court has reiterated the settled legal principles to be considered while granting or refusing bail as under:-.

*“15. At this juncture, we may refer with profit to certain authorities which lay down the considerations that should weigh with the Court in granting bail in non-bailable offences. This Court in **State v. Capt. Jagjit Singh** (1962) 3 SCR 622 and **Gurcharan Singh v. State (Delhi Admn.)** (1978) 1 SCC 118 has held that the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case are to be considered. The said principles have been reiterated in **Jayendra Saraswathi Swamigal v. State of T.N.** (2005) 2 SCC 13.*

*16. In **Prahlad Singh Bhati v. NCT, Delhi and Anr.** (2001) 4 SCC 280, this Court has culled out the principles to be kept in mind while granting or refusing bail. In that context, the two-Judge Bench has stated that while granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.*

*17. In **State of U.P. through C.B.I. v. Amarmani Tripathi** (2005) 8 SCC 21, while emphasizing on the relevant factors which are to be taken into consideration, this Court has expressed thus: -*

While a vague allegation that the 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. In the said case, the Bench has also observed as follows: - Therefore, the general rule that this Court will not ordinarily interfere in matters relating to bail, is subject to exceptions where there are special circumstances and when the basic requirements for grant of bail are completely ignored by the High Court.”

5. In **Ash Mohammad v. Shiv Raj Singh @ Lalla Babu and Anr.** JT 2012 (9) SC 155, the Apex Court while dealing with individual liberty and cry of the society for justice has opined as under: -

“It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilized milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organized society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires.”

6. In **Kalyan Chandra Sarkar vs. Rajesn Ranjan @ Pappu Yadav and Anr.** AIR 2004 SC 1866, the Supreme Court laid down the law with regard to grant or refusal of bail, as under:-

“11. 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 v. Sudarshan Singh and Ors. 2002CriLJ1849 and Puran v. Rambilas and Anr. 2001CriLJ2566 .*

7. The Hon'ble Supreme Court while discussing the issue of long period of incarceration in jail in ***Pramod Kumar Saxena Vs. Union of India(UOI) and Ors.***, JT 2008 (10) SC 195 has held as under:-

“16.mere long period of incarceration in jail would not be per se illegal. If the petitioner has committed offences, he has to remain behind bars. Such detention in jail even as an under-trial prisoner would not be violative of Article 21 of the Constitution. If the petitioner has committed non-bailable offences and in connection with those offences he is in jail, the custody can never be said to be unlawful or contrary to law and he is not entitled to be enlarged on bail.”

8. Merely because the prosecution evidence is at the verge of conclusion is also no ground to release the petitioner on bail. Rather it shows that trial has been expedited.

9. Taking into consideration the nature and gravity of the offence and the scientific evidence i.e. the DNA test report, I do not find it to be a fit case to enlarge the petitioner on bail.

10. The bail application is dismissed.

PRATIBHA RANI, J.

NOVEMBER 24, 2017

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