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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : 23rd MAY, 2018

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BAIL APPLN. 852/2018

NITIN SABHARWAL

..... Petitioner

Through : Ms.Rebecca John, Sr.Advocate with
Mr.Viraj Datar, Mr.Kushdeep Gaur, Mr.Harsh Bora &
Ms.Megha Bahl, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through : Mr.Ravi Nayak, APP with Insp.Inshwar
Singh, Crime Branch, R.K.Puram.
Mr.Manoj K.Ohri, Sr.Advocate with Mr.Chetan Anand,
Mr.Prateek Tripathy, Mr.Nawab Singh Jaglan,
Mr.Abhimanyu Singh, Mr.Rajiv Ranjan Raj &
Mr.Aakash Srivastava, Advocates.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. The petitioner – Nitin Sabharwal seeks regular bail under Section 439 Cr.P.C. in case FIR No.219/2017 registered under Sections 302/201/34 IPC at PS New Friends Colony (Crime Branch). Status report is on record.
2. I have heard the learned counsel for the parties and have examined the file.
3. Learned Senior Counsel for the petitioner urged that the petitioner is in custody since 04.12.2017. At the time of incident

when the deceased Hemant Chawla died, the petitioner was not present at the spot. Call Detail Records relied upon by the prosecution confirm that the petitioner was not present at the place of occurrence between 11.30 p.m. to 04.30 a.m. on the night intervening 04/05.07.2017. As per post-mortem report, victim's death occurred in between 01.30 a.m. to 02.30 a.m. Learned Senior Counsel further urged that the petitioner had no motive whatsoever to cause the victim's death; they were childhood friends and on the day of occurrence had dined and wined together. The victim had long history of alcohol and drug abuse and was undergoing treatment for depression and anxiety related problems. On the night of 04/05.07.2017, the deceased had consumed a full bottle of wine and imbibed 2 – 3 grams of cocaine; thereafter, he snorted 2 grams of smack. It was further contended that the delay in lodging the FIR has not been explained. Initially, the victim's family had not suspected any foul play. Cause of death has remained unknown. As per post-mortem examination report, trachea and larynx both were intact and without any injury or damage. Relying upon the judgment '*Satish Nirankari vs. State of Rajasthan*', 2017 (8) SCC 497, Senior Counsel would urge that the death by 'strangulation' is suspect. It was further urged that the prosecution has not collected sufficient evidence to connect the petitioner with the crime; attempt has been made by the prosecution to shift the entire burden to prove the prosecution case upon the accused under Section 106 Evidence Act. The petitioner has already joined the investigation several times; nothing incriminating has been recovered from his possession or at his instance.

4. Learned Senior Counsel for the complainant urged that considering the gravity of the offence and serious allegations, the petitioner does not deserve benefit of bail. The case is still at its initial stage and charges are yet to be framed. The prosecution witnesses primarily are the petitioner's servants and there is every possibility of their being threatened or influenced. The defence taken by the petitioner is conflicting and inconsistent. No information about the victim's death was conveyed in promptitude to his relatives.

5. Learned APP urged that the petitioner firstly did not name the third associate; he mislead the prosecution and it caused delay in lodging of the FIR and arrest of the petitioner.

6. The petitioner had earlier filed Bail Application 258/2018 before this Court which he opted to withdraw it on 13.03.2018. It was informed that the petitioner had filed an application for statutory bail before the Trial Court.

7. The trial is at its initial stage; charge has yet not been framed. In the FIR, victim's mother suspected foul play in the death of her son Hemant Chawla aged around 47 years and implicated the petitioner in the crime. Victim's death occurred at the petitioner's residence on the night intervening 04/05.07.2017. As per medical report of the board of doctors constituted at AIIMS, cause of death is 'asphyxia as a result of manual strangulation'. It was further opined that asphyxial death in the case of strangulation may be immediate the deceased may remain in gasping stage for some time before death. Time since death was mentioned at 12 hours which could vary in the range of 2 or 3 hours either side. Various injuries were noted on the

body of the deceased at the time of post-mortem examination. No explanation has been offered by the petitioner as to how and in what circumstances, the victim sustained various ante-mortem injuries on his body. Injury No.1 was opined to be the result of 'pressure over neck'; injuries Nos.2 & 3 were opined to have been caused by blunt force impact.

8. Post-sequent conduct of the petitioner is unnatural. It is not believable that the petitioner and his friends would leave the victim alone in precarious condition to go out at odd hours in the night from 11.30 p.m. to 04.30 a.m. for outing. It was disclosed that the petitioner and his associates had remained present at House No.A-168, NFC. Call Detail Records also show their location at the said place. When specifically enquired as to whom the said house belonged, it was informed that it belonged to a 'XXXX' girl (words omitted). When enquired if the statement of the said inmate of the house has been recorded, it was denied.

9. Even after allegedly coming to know about the victim's death from Bhim Singh on his mobile at around 04.41 a.m., delay in informing the victim's family members has not been explained. The victim was not taken immediately to any hospital. Only when the victim's mother after coming to know about the incident at around 06.06 a.m. in USA insisted the petitioner and his family members to take the victim to the hospital, an ambulance was called.

10. There are allegations that the T-shirt which the victim was wearing was removed and thrown away in the next morning.

11. The unnatural death of the victim had occurred in the petitioner's house at odd hours. The petitioner and his associates were in the company of the deceased soon before he expired. It is for the petitioner to explain certain facts leading to the victim's death which are in his special knowledge. Allegations against the petitioner are also that he tried to mislead the investigating agency. It was claimed that the victim had consumed wine, imbibed 2 – 3 grams of cocaine and thereafter snorted 2 grams of smack. However, as per FSL reports no common poison; no narcotic drug or psychotropic substance was found.

12. The trial is at its crucial stage and material prosecution witnesses whose statements under Section 164 Cr.P.C. have been recorded are yet to be examined. There is every possibility of the petitioner to influence the said witnesses who were stated to be his domestic servants.

13. Considering the serious allegations regarding the victim's death and the attendant circumstances, it is not a case to grant bail to the petitioner at this stage. The bail application is dismissed.

14. Observation in the order shall have no impact on merits of the case.

(S.P.GARG)
JUDGE

MAY 23, 2018 / tr