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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on 07.11.2019

+ **BAIL APPLN. 2114/2019**

VIKASH KUMAR.

..... Petitioner

Through: Mr. Sarvesh Singh & Mr.
Raghubar Sharma, Advocates.

versus

STATE (GOVT OF NCT OF DELHI) Respondent

Through Ms. Neelam Sharma,
APP for State along with Insp
Sanjeev Kumar, PS Karawal
Nagar.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J.

1. Vide this order I shall dispose of the bail application u/s. 439 CrPC filed by the petitioner Vikash Kumar in FIR No. 68/2017 u/s. 364-A/302/201/34 IPC, P.S. Karawal Nagar.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and has been falsely implicated. It is submitted by the Ld. Counsel that charge-sheet has already been filed. The material witnesses i.e. the complainant has been examined and the

report from FSL has also been filed in above mentioned matter. Nothing incriminating has come against the petitioner but has appeared only against the main accused i.e. Aryan @ Laxman. There is no eye-witness available on record, who saw the petitioner with the deceased boy. It is further submitted that what to talk of role, even name of the petitioner has not appeared in the statement of any of the PWs. Moreover petitioner has not been named in the FIR. The arrest of the petitioner was made solely and exclusively only on the disclosure of main accused and no credible evidence is available on record against the petitioner. No recovery has been effected from the petitioner. As per FIR, the deceased boy had gone behind the Baraat, at Karawal Nagar, Delhi. It is a mystery that who took the boy along with him and killed the boy as no one saw him that time. It is further submitted that FSL result has already come on record and the examination in chief as well as cross-examinations of both the material witnesses i.e. PW 3 Swaran Kumar Mishra and PW 4 Vinod Mishra has been completed on 01.11.2018. It is further submitted that petitioner was arrested by the Police on 24.02.2017 and since then he is in Judicial Custody.

3. It is next submitted by Ld. Counsel for the petitioner that as per FIR complainant stated that his son got missing at about 8:00 p.m. in the night of 20.02.2017 from Karawal Nagar, Delhi and in his examination-in-chief as PW-3 on 23.10.2017 he specifically submitted that *“she also told me that she had seen her son Andaz lastly at about 7.50 p.m. when baraat was going on near the neighbourhood’*. As per disclosure statement, the petitioner took the son of the complainant at about 6.00 p.m. on 20.02.2017. The petitioner is a resident of Chaman Vihar, Ghaziabad, Uttar Pradesh and Karawal Nagar falls in Delhi. Admittedly, deceased went behind the Barat and hence no role can be attributed to the petitioner. It is further submitted that in the examination-in-chief as well as in cross-examination of vital witness PW-13 Abhishek Kumar, only role of co-accused Aryan @ Laxman has come on record and not that of the petitioner and this witness has specifically deposed in the cross-examination that he did not know accused Vikas.

4. It is next submitted by Ld. Counsel that there is no substance in the police version that the petitioner threw the deceased boy from the Railings of Yaumna River with a view to kill him since the said area is

the busiest where hundreds of people keep coming and going. It is submitted that petitioner is of tender age and since he is neither a previous convict nor any other case is pending against him, he be, therefore, released on bail, in the interest of justice.

5. Ld. APP for the state has opposed the bail application on the ground that allegations against the petitioner are serious in nature. Petitioner along with co-accused is involved in a heinous crime of murder. Ld. APP has further submitted that evidence of the prosecution witnesses cannot be appreciated at the stage of bail. He has, therefore prayed for dismissal of the bail application.

6. I have considered the rival submissions. Learned Counsel for the petitioner has relied upon a case titled '**Suresh Chhotalal Verma vs. State of Gujrat, 2001 (4) R.C.R. (Criminal) 144**'. I have gone through the above case law. There is no quarrel with the proposition of law laid down therein. However, this authority is distinguishable on the basis of facts and circumstances stated therein. Moreover, it is a settled law that while granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which

conviction will entail, the character of the accused, the circumstances which are peculiar to the accused, his role and involvement in the offence, his involvement in other cases and reasonable apprehension of the witnesses being tampered with. As per prosecution version, on 21.02.2017 on the complaint of Sh. Swaran Kumar Mishra, a case FIR No. 68/17, u/s 363 IPC was registered at PS Karawal Nagar, Delhi, regarding missing of his son Master Andaj aged 07 years from a barat going towards DLF from Karawal Nagar. On 23.02.2017 a ransom call of Rs. 2,50,00/- was received from mobile no. 9716865330 by the uncle of child. It was threatened that if they inform the police or refuse to give money, the child will be killed. The above phone was found in the name of one Smt. Archana w/o Rajesh Chourasia R/o B-2, Gali No. 6F, Ankur Enclave, Delhi, who was examined and she told that her mobile phone was stolen and she suspects that phone was stolen by friend of her son namely Aryan @ Laxman. Aryan @ Laxan was interrogated and he disclosed that on 20.2.2017 he along with his associate Vikas Kumar (petitioner) kidnapped the child by taking him into auto to bridge at Yamuna for ransom. He had insisted that

child be taken back to house. As there was fear of being caught by police, the child was killed and thrown into river the Yamuna. It is alleged that the petitioner Vikash Kumar who was residing in the neighborhood had kidnapped the child, was familiar with him and, therefore, the child had not shown any resistance. Petitioner as well and his co-accused were arrested on 24.02.2017. From the possession of accused mobile Phone from which the ransom was demanded was recovered. The floating dead body of child Andaj was recovered near garbage in Yamuna river. Post Mortem of deceased child was conducted at GTB Hospital Mortuary in which the cause of death given by doctor was Asphyxia as a result of ante mortem drowning. Petitioner is, thus, a co-accused and involved in brutal murder of a child of 7 years and his bail application has been rejected thrice by Ld. Trial Court. It is a settled law that evidence cannot be evaluated and scrutinized at the stage of consideration of bail application. The Ld. Trial Court will examine and discuss the same at the appropriate time as any observation from this court at this juncture will either prejudice the case of the petitioner or that of the prosecution. In view of the fact that allegations against the

petitioner are, prima facie, serious in nature as he is involved in a heinous crime of kidnapping and murder of a child of 07 years and evidence is still being recorded by Ld. Trial Court, no grounds for grant of bail to the petitioner are made out at this stage. The bail application is, therefore, dismissed. Ld. Trial Court is, however, expected to conduct the trial as expeditiously as possible.

BRIJESH SETHI, J

NOVEMBER 07, 2019
(AP)

