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

+ **BAIL APPLN. 1018/2019**

SONU

..... Petitioner

Through Mr. J.G. Sethi, Mr. M.K. Sethi and
Mr. Abhay Kumar, Adv.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through Mr. Amit Chadha, APP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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19.08.2020

The hearing has been conducted through video conferencing.

1. Present petition has been filed by the petitioner under section 439 Cr.P.C. for grant of regular bail in pursuance to FIR No.214/2016 for the offences punishable under Sections 302/120B/482/34IPC and 25/27 Arms Act, registered at Police Station, Palam Village.
2. Learned APP has opposed the present petition by submitting that on 13.05.2016 a PCR call was received vide DD No. 39A in Police Station Palam Village that "*a man was shot at Hero Chowk palam village*". The call was marked to ASI Rajender, who reached the spot along with the staff. They found that the shutter of the house was opened, wooden door was closed. After opening the door they found pool of blood on the floor and an iron gate in the left corner was closed which opens in the interior of the house. There was blood stains on iron gate, bench and floor. There was a gunshot hole on the wooden wall on the right side of the clinic. There was

blood stains on all the things there.

3. During the course of investigation site plan was prepared. The post mortem of deceased was conducted from DDU Hospital vide PM No. 736 /16, PM Report was collected in which Doctor opined that the cause of death is hemorrhagic shock via injury no. 1 which is sufficient to cause death in ordinary course of nature. Injury no 1 is fresh in duration and caused by firearm weapon. Hard disc of CCTV Footage was taken into police possession of CCTV installed in the street along with certificate U/S 65 B Indian Evidence Act. The statement of Ms. Nirmala Yadav was recorded U/S 161 Cr.P.C. who was the tenant of the deceased, Ms. Nirmala Yadav stated that she was the friend of the one Hari Om Sharma but due to his ill behaviour she broke up her friendship with him. Deceased Balwan Singh Ramawat used to help her against Hari Om Sharma .

4. Learned APP submits that present incident has taken place on 13.05.2016, petitioner was arrested on 18.05.2016 and on 19.05.2016 pistol was recovered at his instance and as per FSL, pistol injury caused to the petitioner matched with the fire shot from the pistol recovered. Moreover, the petitioner has taken an amount of Rs.6,000/- to execute the murder. The said amount was paid in the petitioner's father's account through electronic machine which was installed in the bank near the house of the Vikrant.

5. Learned APP submits that above named lady was friend of Hari Om who was tenant of the deceased. The said deceased doctor used to help her against ill treatment of Hari Om due to which Hari Om has enmity against the deceased. Co-accused Hari Om hired Vikrant @ Sunny to kill the deceased and Vikrant further hired petitioner and co-accused Angad. Angad and petitioner accordingly went to the clinic to execute the plan and Angad

shot at the deceased due to which he died and Sonu stood outside the clinic with the bike. Thus, scientific evidence as well as circumstantial evidence establishes that petitioner and co accused Angad are the persons who executed the conspiracy hatched by Hari Om to kill deceased.

6. Learned APP submits that co-accused Hari Om who is the main conspirator and Vikrant have been granted bail vide order dated 15.03.2018 and 21.04.2018 respectively by the Trial Court on the ground that they did not kill the deceased and nothing was recovered from them whereas the petitioner herein has killed the deceased along with Angad, thus, the present petition deserves to be dismissed.

7. It is not in dispute that petitioner was arrested on 18.05.2016 whereas incident is of dated 13.05.2016. Regarding the money received, learned counsel for petitioner argued that petitioner was working as servant with Vikrant and the said amount is in lieu of the work done by the petitioner and the said amount is petty amount which cannot be said that amount is taken to kill the deceased at the instance of Vikrant.

8. It is further submitted that Hari Om had paid Rs.50,000/- to Vikrant for the execution of murder. In addition to above, Rs. 37,000 was taken by Vikrant from Hari Om as a loan.

9. Case of prosecution is that Hari Om was in close relationship with one Nirmala who was living as a tenant of the deceased Dr. Ramawat. She was earlier the neighbour of accused Hari Om but later on shifted to the house of deceased as a tenant. As the relationship between Hari Om and Nirmala turn out to be acrimonious, charges and counter charges were levied upon each other by filing various complaints and cases. However lately, both decided to end the said bitterness and in same pursuance a settlement-cum-

compromise was duly executed between them through a Mediation Agreement dated 07.05.2016, held in the Mediation Cell, Dwarka Courts, Delhi (attached as Annexure P/1 in the set of additional documents filed vide dairy no. 542335/20 dated 23.07.2020). As per the said agreement, both Hari Om and Nirmala decided to end all litigations and withdraw cases filed against each other. Hari Om found that Nirmala is not adhering to terms of the said Mediation Agreement dated 07.05.2016 and allegedly decided to eliminate the deceased Dr. Ramawat upon whose instructions the Nirmala was supposedly acting. Accordingly, Hari Om contacted his known Vikrant@Sunny and is alleged to have executed the plan to eliminate deceased. Vikrant@Sunny is stated to have hired two of his other associates i.e. Angad and Sonu, the present petitioner and had allegedly made them agreed to execute the crime and promised to pay an amount of Rs.20,000/-.

10. As argued by learned counsel for petitioner, prosecution failed to corroborate the timeline of incidents as stated above and had cooked up the false story to implicate the accused persons including the present petitioner without any plausible or credible explanations. Going per the said theory, if the main conspirator Hari Om planned the crime after the failure of Mediation Agreement dated 07.05.2016, how come Vikrant@Sunny made a call 10-12 days earlier to the date of the incident and stated to have hired the two boys Sonu & Angad to finish the work (as stated in charge sheet running page no.30 and also stated in Status Report page no.3). The period of days between the commission of crime on 13.05.2016 and planning of the same after failure of agreement dated 07.05.2016 as alleged is not more than 5-6 days and thus the alleged hiring of the present petitioner by said Vikrant@Sunny 10-12 days in advance does not hold any substance and is

thus sheer imagination.

11. It is further submitted by learned counsel for petitioner that prosecution in its charge-sheet/investigation report and also in the status report dated 21.05.2019 filed in the present matter, had squarely laid emphasis on the so-called one time money/cash transfer of Rs. 6,000/- by the co-accused Vikrant@Sunny through ATM/Cash Deposit Machine in the bank account of the father of the present petitioner namely Shri Rajender bearing No. 33899901166 at SBI Etah Branch on 20.04.2016 allegedly to enable the accused/petitioner Sonu for making arrangements of bike and weapon, purportedly used in the present case. The said trail has exposed by the prosecution does not hold any good as the said transfer was made 17-18 days earlier to so-called planning made by the main conspirator Hari Om and instead was towards the part of wages of the petitioner to his father at Etah U.P. as the petitioner was employed as household servant with the Vikrant@Sunny. It is further argued that the said cash deposit transaction was not only a solitary transaction held in the account of the father of the petitioner as in past also a sum of Rs. 1,700/- on dated 02.01.2016 and Rs. 800/- on dated 25.06.2015 were also duly deposited in the said bank account and was withdrawn by the father of the petitioner. The abovementioned deposit, when made on the instance/request of the father of the petitioner to meet his daily chores at his village in Etah U.P., was instantly withdrawn on the same date i.e. 20.05.2016. The prosecution has deliberately concealed the aforesaid fact of multiple transactions being made in the said account and instead chosen to show only single entry as one time transaction.

12. Further case of the petitioner is that the prosecution has stated in its reports that petitioner was apprehended from the house of the

Vikrant@Sunny on 19.05.2016. Had the petitioner participated in the crime as alleged by the prosecution that too after coming from his native village in Etah U.P., the petitioner instead of returning back or hiding himself, remained present/available in the house of the Vikrant@Sunny so as to be apprehended by Police, is highly unbelievable and unsustainable. The prosecution has also not refuted the fact that the petitioner was working as household servant at the house of Vikrant@Sunny for last several years.

13. Regarding alleged motorbike or weapon (Katta or country made pistol) stated to have been used in the commission of crime were never recovered from the immediate possession of the present petitioner or the crime spot instead were alleged to have been collected as lately as on dated 19.05.2016 i.e. six days after the date of incident 13.05.2016, purportedly from a place near Drain (Nala) at Ring Road Paschim Vihar, with no eyewitnesses or witnesses for such recovery, casting serious doubts about the candor of the same. Furthermore the aforesaid two articles were said to be recovered at the instance of the accused persons/petitioner and surprisingly had no fingerprints/impression despite being lying intact/untouched six days, casting serious doubts on the story of the prosecution and thus were planted.

14. Moreover, prosecution has failed to produce or interrogate the actual owner of the bike stated to have been used in the crime or hired by the petitioner. The stance of the prosecution that the said owner was untraceable is highly improbable, unconvincing and unjustified more specifically when the Engine number and Chassis number along with make and year of the vehicle (motorbike) was very much readily available with them. The said lackluster attitude of the police officials itself cast sufficient apprehensions

and reasonable doubts about the manner of the investigations carried upon.

15. Further, case of the petitioner is that status report filed by the prosecution has grossly encircled around the averments of the FSL reports/opinion filed by the Ballistic Experts before the learned Trial Court. It is submitted that the said witness from the prosecution is yet to be examined before the Ld. Trial Court and the petitioner strongly refutes the claims made in the said report.

16. Keeping in view the aforesaid facts as advanced by learned counsel for petitioner and the fact that main conspirator Hari Om and other conspirator Vikrant have already been released on bail by the Trial Court vide order dated 15.05.2018 and 21.04.2018 respectively and co accused Angad has been granted interim Bail on 10/6/2020 by this court and the fact that prosecution has examined only 10 witnesses out of 29 prosecution witnesses, thus, trial shall take substantial time. In view of above, I deem it fit to grant bail to the petitioner.

17. Accordingly, he shall be released on bail forthwith on his furnishing a personal bond of Rs.25,000/- and a surety of the like amount to the satisfaction of Trial Court

18. Petitioner shall not directly or indirectly influence any witness or tamper with the evidence.

19. The Trial Court shall not get influenced by the observation made by this Court while passing the order.

20. The petition is, accordingly, allowed and disposed of.

21. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for information and necessary compliance.

22. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email

SURESH KUMAR KAIT, J

AUGUST 19, 2020
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