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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1766/2020

KAMLESH

..... Petitioner

Through: Mr.Vijay Kinger, Advocate

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr.Kamal Kumar Ghei , APP for
State

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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01.09.2020

(Hearing through Video Conferencing)

The status report dated 30.8.2020 has been submitted by the State. Along with the status report, is the copy of the order dated 17.10.2019 of the learned Metropolitan Magistrate-04 (North-East) Karkardooma, whereby the petition filed by the approver Sh. Sanjay Kumar Suri, under Section 306 of the Cr.P.C., 1973, was allowed and he was tendered pardon and thereafter the statement under Section 306(4)(a) of the Cr.P.C. was recorded by the learned Trial Court. The statement of Mr.Sanjay Kumar Suri, the approver in the instant case, has been annexed by the State with the status report.

On behalf of the applicant it has been submitted that the applicant had no motive whatsoever nor any interest in the alleged commission of the murder of the lady, i.e., the tenant named Kiran, a tenant of F-14/6, Model Town-2, Delhi and that the applicant ekes out his living by pulling a rickshaw. It has further been submitted on

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behalf of the applicant that the applicant's wife is totally blind and that the applicant has five minor children to look after and they are dependent on his source of income and the presence of the applicant is required to look after the family.

It has also been submitted on behalf of the applicant that the person who was wholly interested in the vacation of the premises F-14/6, Model Town-2, Delhi i.e., the owner of the said premises wanted the premises to be vacated by Kiran, the tenant since deceased has been released on bail. It has further been submitted on behalf of the applicant that the said Paramjit Singh Ahluwalia, was initially not even chargesheeted for the alleged commission of the offence punishable under Section 302 of the Indian Penal Code, 1860, and that the charge sheet was filed against Paramjit Singh Ahluwalia only under Section 202 of the Indian Penal Code, 1860, and subsequently Section 302 and 120B of the IPC, 1860, were brought against Paramjit Singh Ahluwalia when the order on Charge dated 27.2.2020 was pronounced by the learned Trial Court and that even thereafter the said Paramjit Singh Ahluwalia was granted bail vide order dated 22.4.2020 in Bail Appln. no. 742/2020 by this Court. The applicant thus seeks his release in the instant case on bail on the grounds of parity with Paramjit Singh Ahluwalia.

It has further been submitted on behalf of the applicant that though the date of the alleged incident in the instant case is of the year 2011, the stated witness Mr.Sanjay Kumar Suri came forward to become an approver in the year 2019, and Mr.Sanjay Kumar Suri, the approver, did not make any disclosure initially and that the approver

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came forward only on 17.10.2019. It has thus been submitted on behalf of the applicant that the prosecution version against the applicant cannot be believed in as much as there has been a gross delay in bringing forth the allegations against the applicant.

On behalf of the State, the application has been vehemently opposed, submitting inter alia to the effect that the witness Sanjay Kumar Suri, the approver was under influence and fear of Mr.Virender Kumar with whom he was working, Mr.Virender Kumar being the advocate of the deceased Kiran and the said Virender Kumar also being the part and parcel allegedly of the conspiracy of the commission of the murder of Kiran in order to get the tenanted premises vacated of which the consideration amount was allegedly kept by Mr.Virender Kumar, with sharing of the proceeds with other co-accused persons which was not given to Mr.Paramjit Singh Ahluwalia and the said Kiran was also murdered with Mr.Virender Kumar having apprised Mr.Paramjit Singh Ahluwalia that Kiran had vacated the tenanted premises. It has thus been submitted on behalf of the State that the statement made by the approver Mr.Sanjay Kumar Suri dated 17.10.2019 recorded by the learned Metropolitan Magistrate-04 (North-East), Karkardooma which is yet to be tested on the anvil of trial during the trial of the case is presently categorical against the applicant in relation to his involvement in the commission of the murder of Kiran Aggarwal. Without any observations on the merits or demerits of the trial that would take place and the testimony of Sanjay Kumar Suri that would be recorded during the trial of the case, it is essential to advert to the statement dated 17.10.2019 of

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Mr.Sanjay Kumar Suri, the approver, recorded by the learned Metropolitan Magistrate-04 which reads to the effect:

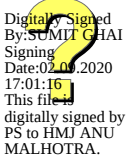
*“On 15.12.2011, I received a call from accused Virender Kumar on my mobile phone and informed that said Kiran Aggarwal will vacate the building of Nirmal Ahluwalia on 16.12.2011 and I should come to Tis Hazari Court in my car in morning on 16.12.2011. P.S. Ahluwalia told me that the key of the room of Kiran Aggarwal be handed over to my servant as he would be out of station on 16.12.2011. I and accused Virender Kumar reached at the said building of Nirmal Ahluwalia in the evening at about 06:00 PM on 16.12.2011 and Prithvi Singh, Kamlesh Kumar, Banti and one another person were there. I knew said Prithvi Singh, Kamlesh and Banti as they used to visit accused Virender Kumar at Tis Hazari Court. I remain in my car make of Wagon R of gray colour and said five persons including accused Virender Kumar remained in the building of Nirmal Ahluwalia and also get meal prepared from servant of Nirmal Ahluwalia namely Arun. I was not allowed to go away from my car by accused Virender Kumar as he wanted to get room vacated from Kiran Aggarwal. Finally, at about 11:00PM Kiran Agarwal came to the said building of Nirmal Ahluwalia and Virender Kumar and Prithvi Singh had gone behind her inside the building and remaining said three persons were at first floor of the building . After ½ hours i.e. at about 11:30 PM I was asked by accused Virender to come to first floor of said building of Nirmal Ahluwalia and I found dead body of tenant Kiran Aggarwal on first floor. Accused Virender asked Prithvi Singh, Kamlesh and other persons to see whether Kiran Aggarwal is alive or not, in my presence. **Thereafter, said Kamlesh also pressed the belt type leather material (fatta) around the neck of Kiran Aggarwal, who was wearing top and jeans at that time.** On saying of accused Virender Kumar, Prithvi Singh and other persons had also*

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searched the pockets and hand bag of said Kiran Aggarwal. The mobile phone of Kiran Aggarwal was recovered from her handbag and same was taken by accused Virender in his possession. Prithvi Singh had brought two big military luggage bags and he and another persons had covered the dead body with said bags. On my objection as to why Kiran Aggarwal had been murdered, Prithvi Singh and his companions had threatened that they will also murder me, if I informed someone about the said incident. They had also manhandled with me. **They had threatened to take dead body of Kiran Aggarwal in my car. I had driven my car under compulsion while said Kamlesh, Bunt, Virender Kumar and one other person namely Birju were inside my car (Bunt and Kamlesh were sitting on the dead body of Kiran Aggarwal) and Prithvi Singh were driving his motorcycle ahead of my car and subsequently he had diverted from our route.** While coming through Delhi University, Civil Line, ISBT flyover Kashmeri Gate, we reached Yamuna Pushta at Usmanpur after crossing Shastri Park. Said persons had thrown the dead body of Kiran Aggarwal on the Kachchi road of 3rd Pushta Usmanpur, Delhi and Virender Kumar had thrown the mobile phone of Kiran Aggarwal in Yamuna River after taking SIM from the mobile phone. After reaching Main Road of Usmanpur, Delhi, said persons started threatening me to kill in case I disclose about the said incident to any person. Birju, Kamlesh and Bunt got down from my car at Khajuri Chowk and Virender also got down from my car at Khade Wali Masjid, Ghonda, Delhi and also threatened that since he is advocate, he will get me hanged in case I disclose about the said incident to anyone. For about one and half year, I was in shock, due to said incident. After about 6 months of incident, I also informed P.S.Ahluwalia about the death of Kiran Aggarwal and the builders who were residing near P S Ahluwalia. Virender Kumar had also beaten me brutally several

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times at Tis Hazari Court Complex in his advocate's chamber bearing No. 369, Civil Side. I also approached some police official in respect of some incident. However nobody helped me. I have made said statement voluntarily and same are a full and true disclosure of facts and circumstances of the case within my knowledge in respect of all accused."

Without any observations on the merits or demerits of that statement also it is essential to observe that the same brings gross allegations against the applicant of his alleged involvement in the murder of Kiran Aggarwal. Taking the same into account and the submissions made on behalf of the applicant that in as much as the applicant had no interest whatsoever in the commission of the murder of Kiran Aggarwal qua which on behalf of the State it has been submitted that the applicant as per the investigation has received the consideration for the same and taking into account the factum that Paramjit Singh Ahluwalia was granted bail vide order dated 22.4.2020 in Bail Appln. No. 742/2020 in view of the factum that he was 94 years of age despite the contention that has been raised on behalf of the applicant that his wife is blind which aspect has been verified by the State and the contention raised on behalf of the applicant that there is no one in family of the applicant to look after his blind wife and minor children who are dependent on the source of his income and that the presence of the applicant is required for the same, in as much as vide proceedings dated 24.8.2020 it has been submitted by the State through the status report that brought forth that the wife of the applicant is blind and it was brought forth that the

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brother-in-law of the petitioner, i.e., the real brother of the wife of the petitioner also resides at the address of the petitioner and pulls an e rickshaw and is taking care of the applicant's wife and his children and their daily needs, taking the gross allegations levelled against the applicant which are stated in the statement of the approver which has been recorded on 17.10.2019 with allegations of the applicant being allegedly wholly involved in the commission of the murder of Kiran Aggarwal, there is no ground whatsoever for grant of bail to the applicant.

The Bail Appln. No. 1766/2020 is thus declined.

ANU MALHOTRA, J

SEPTEMBER 01, 2020/SV

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