

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

+ **BAIL APPLN.291/2021**

Date of decision: 26th March, 2021

IN THE MATTER OF:

FARMAN

..... Petitioner

Through Mr. Akshay Chandra, Mr. Suresh Chaudhary, Mr. Gagan Kumar Singhal, Mr. Atul Sharma and Mr. Aditya Chandra, Advocates.

versus

THE STATE

..... Respondent

Through Ms. Meenakshi Chauhan, APP for the State along with Inspector Joginder Singh and SI Ramesh Kaushik, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner is seeking bail in FIR No. 465/2017 dated 21.04.2017, registered at Police Station New Ashok Nagar, Delhi for offences punishable under Sections 365, 302, 201, 120B, 34 and 506 IPC.
2. The brief facts leading to this bail application are as follows:
 - a) A complaint was filed by one Rashid (hereinafter referred as 'the complainant') resident of A-3/364, New Kondli, Delhi, stating that his son, Firoz is missing since 11.04.2017. The complaint was recorded vide DD No.24-A dated 06.07.2017. Inquiry was initiated on the report. The records disclose that another report had been lodged on 13.05.2017 at Police Station Ghazipur stating that Firoz is

missing. A habeas corpus petition being W.P.(CRL) 2377/2017 was also filed before this Court.

b) The statement of the complainant was recorded wherein he has stated that his son, Firoz (hereinafter referred as 'the deceased') left home on 11.04.2017 at about 5:40 PM to meet one Gopal. FIR No.465/2017 dated 21.04.2017, was registered at Police Station New Ashok Nagar, Delhi for offences under Sections 365 and 34 IPC. During investigation it was found that the deceased, Gopal, Farman/petitioner herein and one Wakil were co-accused in many cases and that the differences had developed between the deceased and the other co-accused. The investigation in the case was transferred to the Crime Branch.

c) During investigation the statement of one Monty was recorded. In his statement, he stated that the deceased was shot in his presence by the petitioner herein, one Raja and other associates at a place around 30-35 Km away from Kanpur. The said Monty also disclosed that since he and Wakil were present there, they were dragged out of the car by the petitioner herein and Raja. It is stated that he succeeded to escape but Wakil was caught by the petitioner herein and Raja, who threatened him of dire consequences if he disclosed the incident to anyone. Gopal was arrested and he disclosed about his involvement and the involvement of the petitioner, Raja, Deepak and Vishal. It was disclosed by Gopal that prior to the murder of the deceased they stayed at Hotel Swami at Kanpur. The evidence of stay of the accused and the deceased was obtained by the Investigating Officer. As per the disclosure, the place where the

deceased was shot was identified and formalities were completed. It was disclosed that the dead body of the deceased was thrown into Gang Nahar, Bulandshahr.

d) One unidentified body was found in April, 2017 in District Bulandshahr. Photographs of the dead body were taken and the dead body was identified by photographs by the family members of the deceased. However the DNA could not be generated from the teeth and bone of the dead body.

e) Statements of Monty and Vakil were recorded under Section 161 Cr.P.C. They were also produced before the Magistrate and their Statement under Section 164 Cr.P.C were also obtained. The petitioner was arrested on 14.05.2018.

f) On the statements under Section 164 Cr.P.C, made before the Magistrate, Section 302, 201 and 120B IPC were added in the present case.

g) Charges were framed. The petitioner and the other accused denied the charges and claimed trial.

h) During trial the eye witnesses, Vakil and Monty, turned hostile and have not supported the case of the prosecution. Material on record also discloses that the other relevant witnesses have also not supported the case of the prosecution.

i) Co-accused Gopal has been granted bail by this Court vide order dated 21.01.2021 in BAIL APPLN.189/2021.

j) The petitioner herein has filed the instant bail application for grant of bail on the ground of parity.

3. Mr. Akshay Chandra, learned counsel for the petitioner states that the petitioner is in custody since 14.05.2018. He would contend that the eye-witnesses have turned hostile. He contends that the eye-witnesses during the investigation had stated that the petitioner had shot the deceased and since the eye-witnesses have given the statement in Court that the petitioner had shot the deceased the case becomes one of circumstantial evidence. Learned counsel for the petitioner would contend that since the two eye-witnesses namely Monty (PW-2) and Vakil (PW-3) have turned hostile, the petitioner's case is identical to that of Gopal who has been granted bail by this Court vide order dated 21.01.2021, in BAIL APPLN.189/2021 and the petitioner is entitled to bail on parity. Mr. Akshay Chandra, learned counsel for the petitioner also points out that as per the eye-witnesses the deceased was shot by the petitioner herein but the MLC of the dead body, which has been recovered and which has been identified by the family members of the deceased as that of Firoz, does not have any bullet wounds which raises doubts as to whether the dead body which was recovered was that of the deceased or was it of someone else. He would therefore state that in the absence of the dead body there is nothing to state that it was the petitioner who shot the deceased. He further contends that the petitioner is in incarceration for the last two years and ten months, 26 witnesses have been examined, the two eye-witnesses and other witnesses have not supported the case of the prosecution and the petitioner is entitled to bail.

4. On the other hand, Ms. Meenakshi Chauhan, learned APP for the State vehemently oppose the bail. She would state that the petitioner is involved in 18 criminal cases. She would state that even though the two eye-witnesses have turned hostile, their evidence can be analysed only during the

trial. She states that the petitioner is accused of a heinous crime i.e. of murder for which the petitioner could be given death sentence and therefore bail ought not to be granted to the petitioner.

5. Heard Mr. Akshay Chandra, learned counsel for the petitioner and Ms. Meenakshi Chauhan, learned APP for the State and perused the material on record.

6. The material on record discloses that Monty (PW-2) and Vakil (PW-3), who were the eye-witnesses, have turned hostile and have not supported the case of the prosecution. Further the dead body which was recovered and which has been identified by the family members of the deceased as that of Firoz, does not have any bullet wounds which goes against the prosecution story that the petitioner had shot the deceased. It is for the prosecution to establish the links and prove, beyond reasonable doubts, that the petitioner has committed the offence of murder. The co-accused, Gopal, has been granted bail by this Court on 21.01.2021, in BAIL APPLN.189/2021 primarily on the ground that the eye-witnesses have turned hostile and many of the relevant witnesses have also not supported the case of the prosecution.

7. The parameters of granting bail have been laid down by the Supreme Court in a number of cases. In Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598, the Supreme Court laid down the factors that must guide the exercise of the power to grant bail in the following terms :

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts,

however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in

the normal course of events, the accused is entitled to an order of bail.”

In Mahipal v. Rajesh Kumar, (2020) 2 SCC 118, the Supreme Court observed as under:

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.”

8. Applying the above mentioned parameters, no doubt the present case is one of murder where the petitioner, if convicted, would either be sentenced to imprisonment for life or would be sentenced to death. The Status Report states that the petitioner is involved in 18 criminal cases but on the other hand, the co-accused, Gopal, has been granted bail by this Court vide an order dated 21.01.2021, in BAIL APPLN.189/2021 on the ground that the eye-witnesses PW-2 and PW-3 have turned hostile and have not

supported the case of the prosecution. The petitioner is identically situated to Gopal.

9. As noticed above, even if the statements of PW-2 and PW-3 given before the Magistrate, which though are only used for the purpose of contradiction, are to be believed to be correct that the deceased was shot dead by the petitioner herein but the dead body which has been recovered and identified by the family members of the deceased as one of Firoz does not contain any bullet wounds. In view of the fact that 26 witnesses have been examined and the co-accused has been granted bail and the petitioner has already been in jail for the last two years and ten months this Court is inclined to grant bail to the petitioner on the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of ₹1,00,000/- with two sureties of the like amount who should be the relatives of the petitioner to the satisfaction of the Trial Court.
- b) The petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- c) The petitioner shall give his address to the IO.
- d) The petitioner shall report to the concerned Police Station three days a week i.e. on every Monday, Wednesday and Friday.
- e) The petitioner is warned not to threaten the witnesses.
- f) The petitioner shall not tamper with evidence.

10. It is made clear and needless to state that the observations made in this order are only for the purpose of grant of bail and cannot be taken into consideration in the trial.

11. Accordingly, the bail application is disposed of along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J.

MARCH 26, 2021

Rahul

