

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

Reserved on : 17.11.2021

Date of Decision : 26.11.2021

IN THE MATTER OF:

+ **BAIL APPLN. 2936/2020 & CrI.M.A.Nos.6318/21, 6319/2021**

JASBIR DABAS @ JASSU

..... Petitioner

Through: Mr. Pradeep Singh Rana, Mr. Abhishek
Rana, Mr. Ankit Rana and Mr. Nitesh
Pande, Advocates.

versus

THE STATE

..... Respondent

Through: Ms. Neelam Sharma, APP for State

AND

BAIL APPLN. 2937/2020 & CrI.M.A.Nos.6326/2021, 6327/2021

JASBIR DABAS @ JASSU

..... Petitioner

Through: Mr. Pradeep Singh Rana, Mr. Abhishek
Rana, Mr. Ankit Rana and Mr. Nitesh
Pande, Advocates.

versus

THE STATE

..... Respondent

Through: Ms. Neelam Sharma, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The above-noted bail applications have been filed under Section 439 Cr.P.C. on behalf of the applicant seeking regular bail in FIR No. 79/2017 registered under Sections 302/201 IPC and FIR No. 80/2017 registered under

Sections 302/201 IPC at Police Station Kanjhawala Outer, Delhi. After completion of investigation, charge sheets in FIR Nos. 79/2017 and 80/2017 have been filed under Sections 302/376D/201/212/34 IPC and Sections 302/201/34 IPC respectively. While FIR No. 79/2017 was registered in relation to death of one *R*, FIR No. 80/2017 was registered in relation to death of one *Arun*. The investigation in both the cases was later handed over to the Crime Branch and since filing of charge sheets in the FIRs, both the cases have been clubbed after committal. It is the case of the prosecution that the aforesaid deceased persons were having an affair and were killed on the same date.

2. As the applicant is an accused in both the cases and is represented by the same counsel, the above-noted bail applications are taken up for hearing together and shall be disposed of vide a common order.

3. Mr. Pradeep Rana, learned counsel for the applicant, has submitted that the applicant is in judicial custody since 24.07.2017 and the charge sheet having been filed, the applicant is no longer required for any investigation. It is further submitted that during the course of initial investigation, the Investigating Officer arrested one *Sachin*, and one *Rajkumar* i.e. the husband of deceased/*R*, subsequent to which, disclosure statements of *Rajkumar* and *Sachin* were recorded, wherein it was stated that they committed the offence after coming to know of the extramarital affair of deceased/*R* with deceased/*Arun*.

4. He further submitted that at the instance of accused/*Rajkumar*, certain objects were recovered, including one *pana*, *wire*, shoes, *Aadhaar* card and purse of deceased/*Arun*, passport size photos of both deceased persons, *jooti* of deceased/*R*, M/van of accused/*Rajkumar* used during the commission of the offence and two mobile phones.

5. Learned counsel also submitted that after the aforesaid accused persons were released on bail, the prosecution spun a second theory involving the present applicant and others. Further, in both the FIRs, there is no eye-witness and the only evidence against the present applicant is the recovery of one mobile phone stated to have been used by deceased/*R* on the day of the incident.

6. While referring to the Customer Application Form (CAF) and the CDR charts placed on record, learned counsel also submitted that the SIM number associated with the SIM card stated to have been handed over by accused/*Sachin* to deceased/*R* is different from the SIM number associated with the SIM card stated to have been recovered at the instance of the applicant.

7. Ms. Neelam Sharma, learned APP for the State, on the other hand, has opposed the bail application. It is submitted that the present case involves heinous offences of rape and double murder. Initially, the investigation was conducted by the local police and thereafter, the investigation was transferred to the Crime Branch, wherefore the initial suspicion regarding involvement of accused/*Rajkumar* and accused/*Sachin* was found to be unsubstantiated.

8. She further submitted that during investigation, a dual SIM mobile handset of deceased/*R* was recovered on pointing out of the applicant from *Meer Vihar, Ganda Nala* on 26.04.2017.

9. Learned APP clarified that while the mobile phone recovered earlier at the instance of accused/*Rajkumar* by the local police in fact belonged to *Rajkumar* himself, the mobile phone recovered at the instance of the present applicant in the investigation conducted by the Crime Branch is a different mobile that belonged to deceased/*R*.

10. It is further submitted that testimony of one *Bharti*, (i.e., wife of accused/*Sachin*) has been recorded, wherein she has stated that she, along with her husband *Sachin*, had attended the birthday celebration of the daughter of her sister-in-law on 29.01.2017, in which deceased/*R* as well as her husband were also present. She has further stated that deceased/*R*, who was a cousin of her husband, had demanded one SIM from him and on her request, *Sachin* had given his SIM card associated with Mobile No. XXXXXX4481 to deceased/*R* in her presence. It is submitted that deceased/*R* had used the said SIM to make calls to deceased/*Arun*, which is corroborated from the CDR details collected during the investigation.

11. I have heard learned counsel for the applicant and learned APP for the State and perused the material placed on record.

12. The present FIRs were registered on the basis of information received on 19.02.2017 and 20.02.2017 regarding dead bodies of a male and a female being found lying in the jurisdiction of *Madanpur*. Subsequently, the deceased persons were identified as deceased/*R* and deceased/*Arun* by one *Rajkumar* (i.e. husband of deceased/*R*) and one *Ajay* (i.e. brother of deceased/*Arun*), respectively. During initial investigation by the local police, accused/*Rajkumar* and accused/*Sachin* were arrested and their statements were recorded, wherein they are stated to have admitted to the commission of the alleged offence after obtaining knowledge of an extramarital affair of deceased/*R* with deceased/*Arun*. Certain recoveries, as noted above, are also stated to have been affected at the instance of accused/*Rajkumar*, including of one *pana* and a wire, allegedly used in the commission of the offence. Eventually, the investigation of the case was taken over by the Crime Branch, and on 26.04.2017, three persons, namely *Devender*

@ Bablu, Manjit @ Harvinder and the present applicant came to be arrested on the basis of secret information.

13. Admittedly, the only evidence against the present applicant is the recovery of a dual SIM Mobile handset having a SIM of Aircel bearing No. XXXXXXXXXXXX6123715968 at his instance. During investigation, the CAF for the abovementioned Mobile No. (i.e. XXXXXX4481) was collected, as per which, the said Mobile No. was found registered in the name of *Sachin*. The prosecution has examined *Bharti* (wife of *Sachin*) in support of its case, who has stated that SIM card associated with the above Mobile No. was given by her husband to deceased/*R* in her presence.

14. As per the additional Status Report dated 29.10.2021, the CDR details obtained during investigation show that after obtaining the SIM card associated with the above Mobile No. from *Sachin*, deceased/*R* had inserted it in a new mobile handset and used it only on 30.01.2017 to make two calls to deceased/*Arun* and thereafter, on 10.02.2017, the said SIM card was inserted in a different mobile handset. From 10.02.2017 onwards, deceased/*R* remained in continuous touch with deceased/*Arun* till 18.02.2017. Even on the date of the alleged incident, i.e., 18.02.2017, several calls were exchanged between deceased/*R* and deceased/*Arun* and location of both the deceased persons was found to be near the place of incident at about 20:09:01 hrs.

15. In respect of the submission of learned counsel for the applicant that the SIM Nos. associated with the SIM card stated to be given by accused/*Sachin* to deceased/*R* and the one recovered at the instance of the applicant do not match, it is noted that in the additional Status Report placed on record dated 29.10.2021, it has been stated that the International Mobile Subscriber Identity (IMSI) No. remained the same till last.

16. In rebuttal, it was submitted on behalf of the applicant that the IMSI No. mentioned on the CAF for the SIM card associated with Mobile No. XXXXXX4481, stated to be given by accused/*Sachin* to deceased/*R*, is different from the one appearing in the CDR details of the above Mobile No. It was further submitted that the IMEI No. mentioned in the CDR chart of aforesaid Mobile No. does not match in entirety with either of the IMEI Nos. mentioned in the seizure memo of the dual SIM mobile handset recovered at the instance of the applicant.

17. Without expressing any opinion on the merits of the above submissions, which require deeper appreciation during the trial, it is noted that as per Status Report dated 16.11.2020, a male DNA Profile was generated from the vaginal swab taken of deceased/*R* at the time of her post-mortem, but the same was not found consistent with the DNA Profile of the applicant. At this stage, it suffices to observe that the present case hinges only on the recovery of the mobile phone, stated to have belonged to deceased/*R*, at the instance of the present applicant. The material witness *Bharti* has been examined and discharged. The applicant has been in custody since 24.07.2017. Keeping in view the totality of the facts mentioned hereinabove, it is directed that the applicant be released on regular bail, subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount in each case to the satisfaction of the concerned Jail Superintendent/Duty M.M./concerned Court and subject to the following further conditions :-

- i) The applicant shall remain available on mobile number of the brother of the petitioner, namely, Yogesh Dabas, i.e.9899332796 which he undertakes to keep operational during the pendency of trial.
- ii) The applicant shall not leave the NCT of Delhi without prior permission of the concerned Court.

iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.

iv) The applicant shall not directly/indirectly try to get in touch with any prosecution witness or tamper with the evidence.

v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

18. The bail applications are disposed of in the above terms. All pending applications also stand disposed of.

19. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.

20. A copy of this order be communicated electronically to the concerned Jail Superintendent for information and necessary compliance.

(MANOJ KUMAR OHRI)
JUDGE

November 26, 2021

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