



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 24.08.2022

Pronounced on : 31.08.2022

+ BAIL APPLN. 3436/2021

SARVESH SINGH

..... Petitioner

Through: Mr. Gopal Jha and Mr. Umesh Kumar
Yadav, Advocates.

versus

STATE NCT OF DELHI

.... Respondent

Through: Mr. Raghuvinder Varma, APP for the
State with Inspector Rahul Raushan.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

CrI.M.(Bail) 1310/2021

1. The present bail application has been filed by the petitioner under Section 439 read with section 482 Cr.P.C. with the following prayers:

"(a) Grant bail to the applicant/accused in connection with FIR No 277 of 2018 under Section 302/201/120B/34 IPC dated 20.07.2018, P.S. Sarai Rohilla; and / or in alternative



(b) pass such other further order as this Hon'ble Court may deem fit proper in the facts and circumstances of the case."

2. In brief, the facts of the present case are that on 20.07.2018 vide FIR No. 277/2018 a case U/s 364/34 IPC was registered at P.S. Sarai Rohilla on the complaint of one Ramesh Chand in which he alleged that on 19.07.2018 his son Prem Kumar, aged about 25 years who was working as LIC agent went to the house of Ajay Singh and his friend Sarvesh (present petitioner) at H. No. A-1/210, Railway Colony, Daya Basti regarding policy. The complainant further alleged that at 11:30 A.M. mobile phone of his son was suddenly found switched off. Complainant tried to search his son Prem Kumar but despite of his best efforts he could not trace his son. In this regard a missing report was lodged vide DD No.-20 B PP Inderlok. Complainant also alleged that his son had a mobile phone and a brown colour bag having Rs. 20000/- and a bullet motorcycle.

3. On the basis of the statement of the complainant, the present case was registered and investigation went underway and after collection of the evidence co-accused Ajay Singh was arrested. Thereafter, other accused persons, including petitioner were also arrested. After the completion of investigation charge sheet was filed against the accused persons and charges under section 302/201/120-B/34 IPC were framed against the accused persons.



4. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, perused the Status Report filed by the State and the records of this case.

5. It is submitted by the Ld. counsel for the petitioner that the petitioner has been falsely implicated and he has no criminal history. It is further submitted by the Ld. counsel for the petitioner that no recovery has been effected from the petitioner. It is further submitted that there is no eye witness to the case of the prosecution and the prosecution is trying to rope the petitioner in the present case on the basis of circumstantial evidence. It is further submitted by the Ld. counsel for the petitioner that the petitioner has been falsely implicated and arrested in the present case only on the basis of the disclosure statement of co-accused which is not admissible in evidence. It is further submitted that the petitioner has co-operated in the investigation and no incriminating material was found against him. It is further submitted by the Ld. counsel for the petitioner that the petitioner was granted interim bail time and again by the Court and after the expiry of the period of interim bail he surrendered before the Court and he has never misused the liberty granted by the Court. It is further submitted by the Ld. counsel for the petitioner that the petitioner has already undergone more than two years in custody as an under trial prisoner. It is further submitted that the charge sheet has been filed, charges have been framed against the petitioner, the prosecution has cited large number of witnesses which are to be examined and the trial will take a long time, so no purpose would be served by keeping the petitioner



behind the bar. It is further submitted by the Ld. counsel for the petitioner that the son of the petitioner who is aged around 7 years old is not keeping well. Ld. counsel for the petitioner has relied upon the order passed by this Court in case titled as "*Sanjay Sharma Vs. State (NCT of DELHI)*" Bail Appln. 3377/2020 decided on 27.11.2020 to contend that the petitioner/accused who is on interim bail can be granted regular bail. He prays that the present application be allowed and petitioner/accused be released on bail.

6. On the other hand, Ld. APP for the State has vehemently opposed the bail application and has submitted that the petitioner is employed in U.P. Police and his co-accused is employed in RPF and despite being the member of a disciplined force, they have committed a heinous offence. It is further submitted by the Ld. APP for the State that at the instance of the petitioner, pointing out memo of the scene of crime, place where the dead body was dumped and shop from where the tin box which was used for disposing of the dead body was purchased were prepared. It is further submitted by the Ld. APP that two CCTV footages have been seized in the case wherein the petitioner has been seen in uniform alongwith his associate sitting in an Innova car while carrying the dead body of deceased Prem Kumar.

7. It is further submitted by the Ld. APP that the complainant has produced a compact disc having conversation between the petitioner and the daughter of the complainant, namely, Kiran. It is further submitted by



the Ld. APP that PW Narender who is the driver of the Innova Car which was used in disposing of the dead body has categorically deposed against the petitioner as well as co-accused Ajay in his statement recorded U/s 161 Cr.P.C. Ld. APP further submitted that PW Islamuddin has also deposed against the petitioner and co-accused Ajay Singh. In response to the argument of the Ld. counsel for the petitioner that the son of the petitioner is not keeping well, it is submitted by the Ld. APP that the wife of the petitioner is available to look after the child.

8. As far as the judgment "*supra*" relied upon by the Ld. counsel for the petitioner is concerned, the same is of no help to him as the same has been passed under the peculiar facts and circumstance of that case. In the instant case, the allegations against the petitioner are grave and serious in nature and according to the prosecution the petitioner who is employed in UP Police has killed and disposed of the body of deceased Prem Kumar aged around 25 years alongwith his co-accused one of whom namely Ajay Singh is also a constable in RPF.

9. During the course of the arguments, Ld. APP has drawn the attention to the statement of PW Narender and PW Islamuddin. From the statement U/s 161 Cr.P.C of PW Narender it is revealed that the petitioner alongwith his co-accused Ajay Singh had kept the iron box in the Innova Car and PW Narender has categorically stated that he has seen the name plate on the uniform of the petitioner where his name Sarvesh was written. He has also named the other co-accused Ajay Singh as his



uniform was also having his name plate. According to this witness, they have kept the iron box which appeared to be very heavy in his Innova Car. According to the case of the prosecution, the dead body was recovered from the iron box which was recovered at the instance of accused Ajay Singh and the scene of crime was also identified by the petitioner herein. As per the case of the prosecution the petitioner was captured sitting on the front left seat of the Innova car in his police uniform which facilitated the Innova car to pass unhindered from the toll plaza. The prosecution has placed on record the CCTV footage in this regard of Toll Plaza UPEIDA Agra UP dated 19-07-2018 from 15:59:50 to 16:00:58 in which Innova Car bearing No. DL 10 C 2740 is visible crossing the Toll Plaza and the petitioner is seen sitting on the front seat.

10. Ld. APP has also during the course of the arguments mentioned the statement of PW Islamuddin who has also categorically stated that on 15.07.2018 petitioner had come to his shop alongwith Ajay Singh and purchased the Tin Box for a sum of Rs. 1100/-. So both the witnesses i.e. PW Narender and PW Islamuddin have categorically stated in regard to the role of the petitioner and any further in depth analysis of the statements of these witnesses might prejudice the case of either of the parties. Further, the contention of the counsel for the petitioner that the petitioner has been arrested only on the basis of the disclosure statement is not correct. There is evidence against him in the form of testimonies of PW Narender and PW Islamuddin.



11. As far as the contention of the Ld. counsel for the petitioner that the son of the petitioner is not well is concerned, the record reveals that much indulgence has been given to him in this regard and his wife is also there to look after the child.

12. It is also pertinent to mention herein that grant of interim bail and grant of regular bail on merits are two different aspects and simply because the petitioner was on interim bail for a certain period of time does not entitle him to grant of regular bail when the facts of the case speaks otherwise. Moreover, at the time of grant of interim bail to the petitioner, the merits of the case were not considered.

13. In the instant case, the petitioner has been charged for the offence of committing murder of one Prem Kumar alongwith other offences and the punishment for the offence of committing murder is death or imprisonment for life and the offender shall also be liable to fine. In **"Satish Jaggi vs. State of Chhattisgarh & Ors."**, (2007)11 SCC 195 it was observed as follows:

"In granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence. At the stage of granting of bail the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial."



14. In that case, the order granting bail to the accused in a case under Section 302/120B IPC was set aside by the Hon'ble Supreme Court observing that while granting bail, the High Court did not consider the nature and gravity of the offence and its impact on the society.

15. In view of the discussion mentioned hereinabove, looking into the nature and gravity of the offence, its impact on the society and severity of the punishment of the offence, no ground for bail is made out, the bail application is, therefore, dismissed. Petitioner is directed to surrender forthwith. The bail application is disposed of accordingly.

16. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

AUGUST 31, 2022

Sumant

न्यायमेव जयते