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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Order pronounced on 12.09.2022

+ BAIL APPLN. 87/2022 & CRL.M.A. 7470/2022

MAHESH GUPTA

..... Petitioner

Through: Mr. Jagdeep Singh Bakshi, Sr.
Advocate with Mr. Abhishek Mohan,
Mr. Manoj Gupta, Mr. Bhanu
Kathpalia and Mr. Pranay Jain,
Advocates.

versus

STATE (NCT OF DELHI

..... Respondent

Through: Mr. Yudhvir Singh Chauhan, APP
with Inspector Karan Singh, PS
Prashant Vihar.
Mr. R.K. Tarun and Mr. Abhay
Solanki, Advocates for complainant

CORAM:**HON'BLE MR. JUSTICE TALWANT SINGH****Talwant Singh, J.:**

1. The petitioner has filed the regular bail application under Section 439 Cr.P.C. in case FIR No. 161/2020, registered at PS Prashant Vihar under Sections 302/201/120-B/34 IPC.

1.1 It has been submitted that petitioner was formally arrested on 18.06.2020 and since then he is in custody and he applied for bail before the learned Sessions Court and the same was dismissed vide order dated 29.10.2020.

1.2 Being aggrieved, the petitioner approached this Court by filing bail application no. 3581/2020 but the prosecution submitted that there were two material witnesses namely Ms. Poonam and Mohd. Chand Siddiqui, so, the



petitioner withdrew the said bail application with liberty to file afresh after examination of the said two witnesses. The petitioner recently moved an application before the Trial Court but the same was also dismissed on 06.01.2022. Hence the present bail application has been filed.

1.3 As per the applicant, his arrest was illegal; story of the prosecution is that applicant was arrested upon disclosure by co-accused on 18.06.2020, however, the applicant was illegally arrested on 17.06.2020 from his residence at about 9:50 PM without giving any information to the family. The arrest memo does not contain the signature of any family member. The CCTV footage installed at the residence of the applicant recorded on 17.06.2020 proves this fact that the family members of the applicant were not allowed to meet him. Even an email was sent to the Prime Minister's office by the younger brother of the applicant. The applicant was arrested only to be coerced for unreal confession prior to the disclosure made by co-accused on 18.06.2020. The applicant was physically targeted by the IO.

1.4 As far as the recoveries are concerned, it has been submitted that the case of the prosecution is that it had recovered the incriminating articles/belongings of the deceased being a towel and a piece of rope at the instance of the present applicant. The plastic rope and towel were recovered from near Gurudwara Guru Singh Sabha, Nilothi, Delhi. The personal articles of the deceased were recovered from almirah lying at Shop No. 34, Ramnagar Colony, Nangloi, Delhi. The possibility of planting these recoveries by the IO cannot be ruled out. The police official visited the house of the victim on 18.06.2020 and took several items belonging to the deceased without making any seizure memo. The wife of the deceased was also taken to the police station by the police and she had been kept there for



an entire day and she also sent an email to the PMO regarding the conduct of the police officials. The police have made no efforts to recover the footwear and purse of the deceased, no efforts were made to recover the 'liquid' which was allegedly used to smother the deceased before strangulating him.

1.5 The further submission on behalf of the petitioner is that the alleged vehicle used in the crime being 'Maruti Alto' was also planted. No movement of the said car has been captured anywhere. As per the post-mortem, all the clothes of the deceased were blood stained but during forensic examination of the said vehicle, not even a single stain of the blood or any other biological clue material was collected.

1.6 As per the petitioner, this is a case of tampering with evidence and implication of innocent applicant. The articles allegedly recovered at the instance of the petitioner were 8 in number but when the bag was opened for TIP, after about two months, it was only containing 4 such articles.

1.7 It has been submitted that there was lack of motive. The prosecution has tried to allege two motives to commit the offence, first being character or misconduct of the deceased towards his daughter and the second motive being of some amount of loan taken by the applicant from deceased. Not one single statement is there to prove either the deceased was of such bad character or the applicant ever saw him doing the forbidden act. So, there is no motive of the applicant to kill the deceased.

1.8 As far as the FSL results are concerned, the towel alleged to have been used to smother the victim, soaked in liquid, it was not proved to be used, as alleged by the police, so it is a false recovery. The recovered rope was not deliberately sent to FSL, as it does not contain any blood stain or any other biological evidence to connect the present applicant with the



crime.

1.9 As far as examination of material witnesses of prosecution are concerned, the important material witnesses, Ms. Poonam Garg (PW-1) and Mohd. Chand Siddiqui (PW-2) have not supported any part of the prosecution story. Copies of the examination of PW-1 and PW-2 have been annexed with the bail application.

1.10 There has been deliberate attempt to save the real culprit. It has been submitted that the investigation has been highly biased with sole motive to target the applicant and material evidences like mobile phone of the deceased were intentionally not collected.

1.11 In grounds for bail, it has been submitted that CDR filed along with the charge-sheet does not prove that the applicant was even present at the scene of the crime; the case being based upon circumstantial evidence, they are contradictory to each other; the applicant has no connection with the alleged offence and there is no evidence to connect him with the crime; the chain of the circumstantial evidences has been robustly broken by the star witnesses, PW-1 and PW-2; the Trial Court has not considered the legal propositions laid down by the judgments cited by the present petitioner; the learned Trial Court did not apply the judicial mind and raised doubts about credibility of PW-1 without there being any basis; the applicant was neither informed the reason nor he was produced within 24 hours from his actual arrest; reliance has been placed upon certain judgments; the story of the prosecution is based upon the figment of imagination of IO; the applicant is innocent and he is entitled to be released on bail.

2. Notice was issued. Status Report has been filed. Nominal roll has been called.



3. In the Status Report dated 20.03.2022, the details regarding receipt of information of an unidentified male dead body being received in Police Station on 13.06.2020, the inquiries made thereafter, the FIR being registered on 13.06.2020 under Section 302 IPC at PS Prashant Vihar, visit of three persons to a vacant DDA ground, and after about half an hour only two persons came out of the said ground, were verified. The witness Mohd. Chand Siddiqui had identified Ashish Gupta as third person from his photograph.

3.1 Further investigation was carried out. It was informed to the police that the gold chain, gold ring, wrist watch, spectacles, mobile phone and purse containing cash and credit cards were not found with the body of the deceased. The CDR of the mobile phones of the deceased and his family member were obtained and analysed. It was noticed that Babita Gupta received a call on 13.06.2020 at 14:44:02 hours from a mobile phone, of which location was near Keshav Puram Metro Station. The said mobile number was found to be registered in the name of Ritu. Ritu, during interrogation, said that she had purchased the said SIM about 9-10 months ago and gave it to her sister Poonam Garg. Poonam Garg stated that the said mobile number was used by her husband, Lokesh Garg. When Lokesh Garg was interrogated, he disclosed that he is unemployed and he used to borrow money from Mahesh Gupta, who offered him Rs.50,000/- to help him in murdering his brother-in-law, Ashish Gupta and he agreed to the said proposal in lieu of money.

3.2 Thereafter, the accused, Mahesh Gupta, who is the present petitioner, was interrogated, who disclosed that her sister, Babita Gupta and her husband, Ashish Gupta had adopted the daughter of his younger brother,



Amit Gupta about 1½ years back. He had noticed the deceased, Ashish Gupta with the said child in an inappropriate manner twice and he objected to the same. The said Ashish Gupta even refused to return the child to her biological parents.

3.3 Mahesh Gupta started nursing grudge against the deceased and he planned to murder him. He had borrowed Rs.32 lacs from the deceased and he was not interested to return the same, so he along with the accused, Lokesh Garg had hatched a conspiracy to murder his brother-in-law, Ashish Gupta. He further disclosed that on 12.06.2020, he talked to Ashish Gupta and asked him to invest some money in a flat and Ashish Gupta agreed to the same. He picked him up from a road going towards Shastri Nagar near Kamal Hotel, Anand Parbat on 13.06.2020 at 2:30 PM.

3.4 Lokesh Garg came in an Alto Car and had brought a plastic rope, a small towel and a liquid having odour smell with him in a bag from his home. The car was driven by Lokesh Garg and Ashish Gupta was sitting on the left front seat of the car and Mahesh Gupta was sitting on the rear seat of the car. Near Keshav Puram Metro Station, the accused Mahesh Gupta asked Lokesh Garg to stop the car and he came out and made a call to his sister Babita Gupta but there was some disturbance in the call and he could not talk to her. When they reached at a vacant DDA ground near Japanese Park, Rohini, the present petitioner poured the liquid on a small towel and put it on the mouth of Ashish Gupta to make him unconscious and then strangled him with a plastic rope. Thereafter, they dumped the dead body in the bushes. They had taken away the personal articles of Ashish Gupta with them.

3.5 Mahesh Gupta and Lokesh Garg were arrested. The police remand



was obtained. The case property, i.e., gold chain, gold ring, wrist watch, spectacles, mobile phone, footwear, purse containing money and debit card, etc. were recovered from the possession of accused Mahesh Gupta from his office on 27.06.2020. The plastic rope and small towel used in commission of crime were recovered at the instance of Mahesh Gupta from a vacant plot at Nilothi, Delhi on 27.06.2020.

3.6 The mobile phone used by the accused Mahesh Gupta to talk with Babita Gupta on 13.06.2020 and Rs.30,000/- out of Rs.50,000/- received by co-accused Lokesh Garg were recovered from his house and the Alto car was also recovered at the instance of Lokesh Garg on 27.06.2020. The mobile phone and footwear of the deceased, bottle of odour smell of liquid and two mobile phones of the accused persons could not be recovered as accused Mahesh Gupta had disposed of the same.

3.7 Babita Gupta was also interrogated in this case. The case property found at the instance of Mahesh Gupta was duly identified by Sachin Gupta. As per the CDR of mobile phones, both the accused persons regularly talked with each other. Witnesses were examined, who have given their statements that accused Mahesh Gupta had borrowed Rs.32 lacs from Ashish Gupta and he had not returned the said amount.

4. Charge sheet was filed on 16.09.2020.

5. Subsequent supplementary charge sheet regarding opinion of the doctor on use of plastic rope was filed. Charges were framed against the accused persons under Section 302/201/134/120B IPC.

6. Supplementary charge sheet was also filed regarding FSL result and CDR regarding investigation of the case.

7. It has been submitted that the present petitioner had moved



bail/interim bail applications on one ground or the other and the same were dismissed on many occasions by the learned Trial Court. His bail application was dismissed as withdrawn on 15.04.2021. Interim bail application of the accused was also dismissed by the High Court on 19.07.2021. He was also found involved in FIR No. 100/2008 under Section 365/302/201/34 IPC, PS Punjabi Bagh, which is pending trial before Court, so the present bail application has been strongly opposed.

8. Further Status Report was filed, in which it is submitted that the recovered plastic rope was sent for subsequent opinion to the doctor, who had opined that the ligature strangulation could have been caused by the plastic rope examined by him. Similarly, the report regarding the towel recovered has been received from the FSL and the same has been filed along with supplementary charge sheet before the Court concerned. Information regarding arrest of the accused was given to his brother Manoj Gupta.

9. Nominal roll summoned from the Jail shows that as on 07.05.2022, the petitioner has completed 1 year, 10 months and 18 days in custody.

10. I have heard the arguments. It has been submitted on behalf of the accused/applicant that he is one of the co-accused, who has already spent about 25 months in jail. The bail application was withdrawn on 15.04.2021 as PW-Poonam Garg and Mohd. Chand Siddiqui were yet to be examined. Now, both the witnesses have been examined and they have not supported the case of the State. Learned counsel for the petitioner has reiterated the grounds as mentioned in the bail application as above.

11. It has been submitted by the learned counsel for the petitioner that the deceased was *Jija* of the accused, i.e., husband of Babita Gupta, who is real sister of the present petitioner. At the time of the incident, it is alleged that



co-accused Lokesh Garg was driving the car and the deceased was sitting on the front seat, the present accused was sitting on the back seat and he had strangled the deceased. Mohd. Chand Siddiqui is stated to be last seen witness. But he did not attend the TIP proceedings. The remand was taken after 14 days and recoveries are alleged to have been made from an open plot which was 15 kms away from the place of incident.

11.1 The motive, as per prosecution, is that some money was lent to the petitioner by the deceased and the deceased was inappropriately behaving with the daughter of the younger brother of the petitioner. Mohd. Chand Siddiqui has completely denied any knowledge about the incident. One of the other witness, Poonam Garg has stated that her mobile phone was used. It was found that liquor was present in the blood of the deceased. The rope was not sent to FSL and only opinion of the doctor was taken. The towel had shown negative result of any common poison. Moreover, the car was not captured in any CCTV camera.

12. On behalf of the State, it has been submitted that at the instance of the present accused, a rope, ring of the deceased, gold chain and spectacles were recovered. This is a case of circumstantial evidence and only two witnesses have been examined. Other material witnesses regarding motive are yet to be examined. Most of the public witnesses are relatives of the present applicant and the deceased and the probability of the accused/applicant influencing/coercing the said witnesses, if he is released on bail, is not ruled out. The accused has committed a heinous crime. Moreover, even prior to this, he was involved in another heinous crime as detailed in the Status Report.

13. On behalf of the complainant, it has been submitted that learned



counsel for the accused/applicant withdrew his application for bail on 15.04.2021. His bail application was dismissed by the Court of Sessions on 06.01.2022. In case, the accused/applicant is released on bail, he may influence the witnesses. No microscopic analysis of the evidence recorded so far can be done by this Court while hearing the bail application. This is not a case of a chance crime. The accused/applicant is already involved in another murder case, so it has been prayed that the present accused/applicant may not be released on bail.

14. In rebuttal, learned counsel for the petitioner has submitted that in another murder case, the present petitioner is already on bail. There is no ground to detain the petitioner in judicial custody. Out of the 39 witnesses, there are no more material witnesses. The entire recovery is a planted recovery at the instance of the complainants.

15. Learned counsel for the petitioner has relied upon the judgement of the Hon'ble Supreme Court in the matter of '*Prabhakar Tewari v. State of Uttar Pradesh and Another*'. In the said case, the son of the deceased victim had gone in appeal before the Hon'ble Supreme Court against grant of bail to the two accused. In the said matter, the High Court had found that there was no incriminating evidence against the applicant/accused Vikram Singh, however, in the present case, there is enough incriminating evidence against the present applicant. The said accused was not named even in the FIR or in the statement of the witnesses recorded under Section 161 Cr.P.C. This is not the case here. Hence, in my view, the ratio of the said judgement is not applicable in the facts of this case.

15.1 Reliance has been also placed on the judgement in the matter of '*Ashok Sagar v. State (NCT of Delhi) 2018 SCC Online Del 6548*'. My



attention has been drawn to paragraph 35 of the said judgement, which is reproduced here under:

“35. Authorities on bail, and the jurisprudence relating thereto, are in overabundance, and it is hardly necessary to multiply references thereto. The principles governing exercise of judicial discretion in such cases, appear, however, to be well-settled. The following principles may immediately be discerned, from the aforementioned authorities:

(i) Incarceration, during trial, is not punitive, but to secure the presence of the accused. The approach of the court, in examining applications for bail, which seek release of the accused during trial, has, therefore, necessarily to centre around the issue of whether continued incarceration of the accused is necessary and imperative, towards securing the end of obtaining his presence when required. Incarceration during trial, therefore, neither chastises nor cures.

(ii) While examining the issue, courts are not to presume that the accused would flee justice, were he to be released, and search for evidence indicating to the contrary. Logistically, every accused, and search for evidence indicating to the potentiality of fleeing. Were this potentially to be allowed to influence the mind of the court, no accused would be entitled to bail.

(iii) While examining the applications for bail, the court has to be duly sensitized to the mandate of Article 21 of the Constitution of India, which guarantees freedom to every citizen of India save and except by procedure prescribed by law. Curtailment of personal liberty during trial, has, therefore, to be limited to those cases in which it is absolutely essential, and in which, in the absence of such curtailment, the process of trial is likely to be hampered by the accused, whether by vanishing or by unduly influencing the trial process, by intimidating the witnesses, or otherwise. If no such apprehension can legitimately be expressed, there can be no reasonable ground to keep the



accused incarcerated, as incarceration would then assume a punitive *avtar*.

(iv) Given this legal position, the nature of the offence committed necessarily has a limited role to play, while examining the merits of an application for bail. This is for a simple reason that the application being examined by the court is not for suspension of sentence, but for release during trial. If the court were to allow itself to be unduly influenced by the nature of the charges against the accused, and the seriousness of the crime alleged to have been committed by him, it would result in obliterating the distinction between grant of bail and suspension of sentence. Inasmuch as the applicant, in a bail application, has yet to be found guilty of the offence with which he is charged, the significance of the nature of the offence stand substantially reduced, while examining the application for bail. Courts have to be alive to the legal position – underscored in the very first paragraph of *Dataram Singh* (supra) – that every accused is presumed to be innocent until proved guilty.

(v) Where, however, the material against the accused is so insubstantial that the court feels that his conviction, in the ultimate eventuate, appears remote, the court can legitimately arrive at a conclusion that, as the accused is highly unlikely to ultimately suffer conviction, his incarceration during trial, would be unjustified.

(vi) Having said that, the decisions cited hereinabove reveal that the Supreme Court has, in certain cases, treated the seriousness of the offence alleged against the accused seeking bail, to be a relevant consideration while examining the merit of his application. While it may be true that, in extremely gross cases, the advisability of allowing the accused to roam at large, during the course of his trial, may be questionable, the court has, nevertheless, to be alive to the fact that, at that stage, the charge against the accused is still in the realm of an accusation, and no more. It would be entirely impermissible for the court, at the stage of deciding the bail application of the accused, to subject



him to a premature trial, far less to return any finding, even tentative, regarding the justifiability of the charge against him.

(vii) The Court cannot, however, while adjudicating a bail application, adopt an entirely accused-centric approach, unmindful of the prevailing public and societal interests hanging in the balance. The right of the accused to liberty, prior to his being found guilty of the charge against him has to be weighed against the public interest involved, in ensuring that the trial proceeds fairly and unhindered. The propensity and potentiality of the accused, were he to be enlarged on bail during trial, to unduly affect the trial process has, therefore, to be necessarily factored in, while deciding the application of the accused for bail. This, in turn, would involve examination of various aspects, such as the antecedents of the accused, any previous incidents (which would involve other criminal cases in which the accused might have been involved) which could indicate that the accused might, if let loose, tamper with the evidence, and the roots of the accused in society. In evaluating this aspect of the matter, the court has necessarily to adopt a holistic approach, and it would be impossible to formulate any guidelines in this regard.”

15.2 There is no dispute regarding the legal proposition propounded in this judgement. It has been rightly noted that while adjudicating the bail application, the Court cannot entirely adopt an accused centric approach, unmindful of interest of public and the society and after weighing this, it is to be taken note that whether the trial process will be affected or not while deciding the bail application. No specific formula or guidelines can be laid.

15.3 In the present case, there is enough scientific and other material on record, which *prima facie* connect the accused with the heinous crime; material witnesses are yet to be recorded, the witnesses are the close relatives of the accused himself and the possibility of the said witnesses being influenced by the said accused cannot be ruled out; the petitioner has a



history of committing crimes of the similar magnitude and hence, by applying this judgement cited by the learned counsel for the accused and keeping the interest of the society and the public as well as the interest of the accused at the same scale, this is not a case where the accused can be released on bail.

15.4 Learned counsel for the petitioner also relied upon an order passed by this Court in bail application No.4289/2021, '*Anis @ Dupettewala v. The State (Govt. of NCT, Delhi)*'. In the said case, although the accused was involved in other matters, but he had been either acquitted or he was released on the basis of period already undergone. He had the benefit of being released on the ground of parity as other co-accused had been already released on bail and under those circumstances, the applicant in the said case was granted bail. The ratio of the said judgement is not applicable to the facts of the present case.

16. After considering the rival submissions of both the sides, I am of the considered view that at this stage, the present petitioner is not entitled to bail for the following reasons:

- (i) He is involved in a heinous crime, not for the first time but for the second time.
- (ii) All the material witnesses are the relatives of the accused as well as of the deceased and the possibility of the present petitioner influencing the said witnesses, if he is released on bail, cannot be ruled out.
- (iii) *Prima facie*, there is enough material on record to connect the present applicant with the murder of the deceased (this opinion is expressed only on the basis of evidence on record of this case and it does not mean that any conclusion has been arrived at by this Court regarding reliability or



admissibility of the said evidence).

(iv) The case is at the stage of recording of evidence of material witnesses and this is not the stage to release the present accused on bail.

17. Keeping all the facts in view, the bail application of the present petitioner is dismissed. Needless to state that anything stated hereinabove will have no effect on the merits of the case before the learned Trial Court.

TALWANT SINGH, J

SEPTEMBER 12, 2022/nk/pa

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