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

% *Order pronounced on 17.10.2022*

+ BAIL APPLN. 4225/2021

SUSHIL KUMAR CHAUHAN

..... Petitioner

Through: Mr. Kishore Kumar Mishra,
Advocate.

versus

THE STATE NCT DELHI AND ORS.

..... Respondents

Through: Mr. N.S. Bajwa, APP for State with
ASI Vinod Kumar, PS Vivek Vihar.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The applicant has prayed for bail in case FIR No.487/2018 under Section 302/201/376-D/34 IPC registered at PS Vivek Vihar. He was arrested by police on 08.10.2018 and since then he is in custody.

1.1 The matter was investigated and the charge sheet has been filed.

1.2 The evidence of the witnesses is being recorded. The applicant has stated that he is not a hard-core criminal; he is not involved in any other case; allegations are false and baseless; there is no credential to the statement of the complainant; there are many contradictions in the statements made by the prosecution witnesses; police has conducted the investigation in haphazard manner; as per the medical report of the deceased, alcohol was found in her body and she might have died due to

excessive consumption of alcohol and the weapon of offence has not been found.

1.3 It is further stated that although, a dead body was recovered on 06.10.2018 but the son of the deceased stated that the factum of death of his mother was informed to him on 05.10.2018 in the evening; the petitioner has a minor daughter who is dependant upon him as his wife has separated from him; there is no direct evidence connecting the present petitioner with the crime; there are no public witnesses to prove the direct link of the accused with the crime and the entire case is based upon circumstantial evidence with loose connecting ends. Under these circumstances, the petitioner has prayed for bail.

2. Notice was issued. Status Report has been filed in which it is stated that on 06.10.2018, at about 9:20 hrs, a report was received regarding a dead body of a lady found in Vivek Vihar near House No. D-217, Vivek Vihar-I. SI was deputed, and thereafter, crime team was also called. The lady was declared brought dead at Hedgewar Hospital.

2.1 FIR was registered under Section 302/201/34 IPC at PS Vivek Vihar and investigation was taken up. During investigation, CCTV footage was analysed where two persons were noticed dumping the body of the deceased after taking it out from the back gate of D-208, Vivek Vihar, Delhi. The deceased was identified. The son of the deceased stated that the present petitioner had borrowed Rs.25,000/- from his mother, so efforts were made to trace the present petitioner and he was arrested on 08.10.2018. He admitted his involvement in the commission of crime and has also disclosed that he along with his associate, namely Anil had committed the murder.

2.2 Anil was also arrested. Both the accused disclosed that they both had

raped the deceased in a room of House No. D-208, Vivek Vihar and smothered her by pillow and dumped the body in the back lane. Thereafter, Section 376-D IPC was also added. On analysis of CDRs of the accused persons, their location was found near the place of the incident. The post-mortem report also corresponds with the time when the crime alleged to have been committed.

3. Charge sheet was filed, and thereafter, two supplementary charge sheets were also filed along with FSL reports.

3.1 DNA profile of Sushil Kumar got matched with the high and low vaginal swab of the deceased. Out of 39 witnesses listed by the prosecution, 19 have already been examined and recording of further evidence could not take place due to the pandemic. The evidence recorded so far is to be read as a whole and a selective portion of such an evidence cannot be taken out to doubt the case of prosecution as it is a case of circumstantial evidence.

3.2 The bail application of the co-accused was withdrawn after some arguments on 26.03.2021. The offence is grave and serious and the petitioner is not entitled to bail.

4. Notice was also issued on the complainant and to the son of the victim. He also placed on record a short synopsis mentioning therein that the applicant has committed an offence of gang rape and murder after intoxicating the victim. Most of the examined witnesses have deposed against the applicant. The applicant has been seen as carrying dead body of the victim to the place where it was dumped.

4.1 The applicant was seen with the victim at around 10 p.m. on the fateful night and with the co-accused at around 4:30 a.m. next morning. The lending of loan amount has been successfully established before the Court.

CDR confirms the presence of the applicant near the scene of crime. As per the FSL report, the DNA profile of the blood sample of the applicant is matching with the vaginal swabs of the deceased/victim.

4.2 The bangles of the victim found from the crime scene are matching with another bangle found near the spot where the dead body was recovered and the finger prints collected from the crime scene is also matching with the applicant. On this basis, bail has been opposed.

5. I have heard learned counsel for the petitioner, learned APP for the State and the learned counsel for the son of the victim. In the present case, the scientific evidence, including the location established on the basis of the CDRs, CCTV footage as well as DNA profiling is against the present petitioner. *Prima facie*, the involvement of the present petitioner in the heinous crime of gang rape and the murder of the victim cannot be ruled out.

5.1 Recording of the evidence is continuing before the learned Trial Court. The motive, as per the prosecution is that the deceased had gone to the house of the present petitioner to demand the amount of loan, which she had extended to him. There is a public witness who had seen the deceased with the applicant at night time and in the early morning, the petitioner was found in the company of the co-accused.

6. Keeping in view the gravity and seriousness of the offence, stage of trial, the evidence recorded so far and the scientific evidence collected by the prosecution and placed before the learned Trial Court in the form of DNA profiling of the blood sample of the present petitioner which matches with DNA profiling of the vaginal swab of the deceased; the CCTV footage showing the present applicant carrying the dead body of the victim to the point, where it was dumped and CDR which shows that the petitioner and

the co-accused were in the same area at the time, when the heinous crime took place and the post-mortem report, which gives the time of death corresponding to the time at which the petitioner and the co-accused were present near the spot, I am not inclined to grant bail to the present accused.

7. The bail application is accordingly dismissed.

TALWANT SINGH, J

OCTOBER 17, 2022

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