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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Order pronounced on: 10.05.2022*

+ BAIL APPLN. 4289/2021

ANIS @ DUPETTEWALA

..... Petitioner

Through: Mr. Sulaiman Mohd. Khan & Ms.
Taiba Khan, Advs.

versus

THE STATE (GOVT. OF NCT, DELHI)

..... Respondent

Through: Ms. Neelam Sharma, APP with SI
Deepak, PS Kamla Market.**CORAM:****HON'BLE MR. JUSTICE TALWANT SINGH****TALWANT SINGH, J.**

1. The petitioner/applicant has moved this regular bail application in FIR No. 20/2015 under Section 302/396/412//34 IPC and 25/27 Arms Act registered at PS Kamla Market. His earlier bail application was dismissed by the learned Trial Court on 04.10.2021.

2. The case of the prosecution, as narrated by the petitioner/applicant, is that on 11.01.2015, Constable Mukesh had given the information to the Police Station that a young boy was found in an injured condition, who was shifted to hospital. The said injured was declared as 'brought dead' on his arrival at the hospital.

2.1. The present FIR was registered under Section 302 IPC. The deceased was later on identified as Rehman Usmani. During investigation, the present petitioner/applicant along with other persons, was arrested and charge sheet was filed under Section 302/396/412/34 IPC and 25/27 Arms Act. The said



case is a pending adjudication before the learned ASJ, Tis Hazari Court. The co-accused, Tehsin was released on regular bail by this Court vide order dated 25.09.2020. The other co-accused, namely, Arshad, Adil and Nadeem, were released on bail by the learned Trial Court.

2.2 The present petitioner/applicant is stated to be in custody since 18.01.2015. He has prayed for regular bail on the grounds that the order of dismissal of his bail was passed ignoring the facts of the case; all the material witnesses have been already examined by the prosecution and there is no chance of tampering with the evidence; other co-accused have been already granted bail by this Court as well as by the learned Trial Court and the role assigned to the petitioner/applicant is less serious than the other persons, who are on regular bail.

2.3 It is further stated that the bail application of the present petitioner/applicant was dismissed only on the ground that he was involved in four other cases; however, out of the four cases, the petitioner/applicant was convicted in FIR No. 134/2012 and he was sentenced for a period of four months in 2017, which he has already completed; he was already acquitted in FIR No. 219/2014; in other two cases, he was sentenced to the period already undergone; hence, this ground of pendency of other four cases against him was not available to the learned Trial Court for dismissing his bail application.

3. Notice was issued. Status report and additional status report were filed.

4. I have heard learned counsel for the petitioner/applicant as well as the learned APP for State.

5. The bail application of the present petitioner/applicant has been opposed on the ground that there is sufficient incriminating evidence against the petitioner/applicant. He and his associates brutally murdered the



complainant by inflicting 7 injuries by sharp edged weapon with common intention. The accused is a member of a gang and was involved in serious offences previously. He is a habitual criminal, having four previous criminal involvements including three cases of NDPS Act, wherein he has been convicted. ATM card of the deceased was recovered from his possession, eye-witness PW Himat deposed against him and PW Ujjaif *alias* Ajju has also clearly mentioned his name in his statement under Section 164 Cr.P.C. and his Chief examination was being conducted.

5.1 The bail application was adjourned from time to time. Later on it is reported that evidence of the said main witness, namely, Ujjaif *alias* Ajju has been recorded. The Advocate for the petitioner/applicant has placed on record the judgements in other matters where either the accused was acquitted or he has been released for a period already undergone or convicted and undergone the sentence.

5.2 In my view, the present petitioner/applicant is entitled to bail on the ground of parity as other co-accused having similar or serious roles have been already released on bail by this Court as well as by the learned Trial Court, as mentioned above.

5.3 The ground taken for rejecting his bail application by the learned Trial Court is that there were four other criminal cases against him. In the NDPS cases, he was convicted and he had already undergone the said punishment and in the case under Arms Act, he was already acquitted. All these cases are for the period 2009-2014.

5.4 The evidence of the main witness, namely, Ujjaif @ Ajju was stated to be under progress when the bail application was filed. Now he has been examined and discharged as noted in the order sheet dated 28.04.2022. An



accused cannot be detained for ever during trial only on the ground that in past he was convicted or acquitted in some cases.

5.5 In view of the above, let the present petitioner/applicant be released on bail on execution of personal bond of Rs. 25,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court. The present petitioner/applicant be released on the following conditions:

- (i) He shall not try to influence the witness in the present case;
- (ii) He shall not indulge in any offence during the pendency of the bail and in case he does so, the State is at liberty to approach this Court for cancellation of the bail granted to him in this matter;
- (iii) He shall provide his Mobile No. to the IO within one week of release and he shall keep his location on at all times;
- (iv) He shall not leave the country without the permission of the learned Trial Court;
- (v) He shall appear before the Court on each and every date when his matter is listed.

6. Let copy of this order be sent to the learned Trial Court as well as the concerned Jail Superintendent for information and compliance.

TALWANT SINGH, J

MAY 10, 2022/pa

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