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

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Reserved on: 24th March, 2023

Pronounced on: 24th April, 2023

+ **BAIL APPLN. 147/2023**

HITESH PRATAP SINGH CHAUHAN Petitioner

Through: Mr.Pramod Kumar Dubey, Senior Advocate with Mr.Kanhaiya Singhal, Ms.Pallavi Garg, Ms.Aditi and Mr.Udit Bakshi, Advocates.

versus

STATE NCT OF DELHI Respondent

Through: Mr.Mukesh Kumar APP for State with Inspector Parmod Kumar, AHTU Crime Branch. Mr.Rajiv Mohan, Mr.Swapnil Tripathi, Mr.Shalini Sinha, Ms.Aranya Sinha and Mr.Kunal Malik, Advocates for complainant.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. Petitioner seeks regular bail in case FIR No.216/2019 under Section 364/302/201/120B/34 IPC registered at police station Greater Kailash-I, Delhi.

2. The learned senior counsel for the petitioner submits there is no direct evidence against the petitioner and the alleged circumstantial evidence raised against him is a bleak one, hence pending trial, the petitioner be granted bail.

3. The facts of the case reveal on 16.11.2019 the complainant came to the police station Greater Kailash-I, New Delhi and reported her brother

Sh.Arun Kumar Sharma age-64 years had left his residence at Kailash Colony, New Delhi for the purpose of attending execution proceedings at Gurugram Courts. On 15.11.2019, he left the house at around 08.35 AM to board a Metro train from Kailash Colony Metro Station. He was scheduled to meet his lawyer at M.G. Road Metro Station and had been missing ever since. She further stated there was an on-going dispute between his brother Arun Sharma and one Rishi Rajpal Singh Chauhan and his wife Chander Bala with regard to property at Sector-17, Urban Estate, Gurugram.

4. That during the course of investigation, the investigation officer had collected various material to allegedly complete the chain of events viz the CCTV footage and CDR and Cell Location Chart of accused Amet Vikram Chhabra, Sahil Kumar @ Bunty; Priyank Khanna @ Prince; Harsh Chhabra; Rishi Raj Pal Chauhan and petitioner herein. The allegations are all accused person hatched a criminal conspiracy in the month of October 2019, hence the location of petitioner, Amet Vikram Chhabra, Priyank Khanna @ Prince, Sahil Kumar @ Bunty and the deceased at DRT and thereafter at the residence of the deceased are all relevant.

5. It is an admitted case, the Hon'ble Supreme Court passed an Order dated 25.09.2019 in favour of the deceased with respect to property bearing No.1094/A, Sector 17, Urban Estate, Gurugram and for the purpose of execution of the said order, Gurugram Court had fixed the matter for 15.11.2019. Thus, the accused decide the deceased be eliminated. Consequently, petitioner met Harsh Chhabra who agreed to help him out. Rishi Rajpal Singh Chauhan also discussed the matter with

his son Hitesh, viz the present petitioner who also agreed with him and hence a conspiracy was hatched to kill Arun Sharma. A deal was struck between petitioner and his father on the one side and Harsh Chhabra on the other side for a sum of Rs.25.00 Lacs for committing the murder of Arun Sharma. It is alleged Rs.1.00 Lac was given to Amet Vikram Chhabra, Priyank Khanna @ Prince by the father of the petitioner and the balance amount was to be given afterwards.

6. It is the case of prosecution the petitioner and Harsh Chhabra came in contact and 8 calls were exchanged on 28.10.2019 between them. On 31.10.2019 morning, both Rishi Raj Pal Singh Chauhan and the petitioner took Amet Vikram Chhabra, Sahil Kumar @ Bunty and Priyank Khanna @ Prince to DRT, Jeevan Tara Building, New Delhi where the deceased had a hearing. The petitioner pointed at the deceased and Amet Vikram Chhabra, Sahil Kumar @ Bunty and Priyank Khanna @ Prince followed the deceased in the Court and then all the way back to his Kailash Colony home on a TSR to see his house. On 31.10.2019 the location of mobile phones of Amet Vikram Chhabra, Sahil Kumar @ Bunty, Priyank Khanna, and of petitioner viz 9873685044 was at JantarMantar/ Sanchar Bhawan/ Patel Chowk Metro Station from 09.36AM to 03.58PM. The location of mobile number of the deceased on 31.10.2019 at relevant time was also at Jantar Mantar, New Delhi. Further, on 31.10.2019 the petitioner through his mobile 9873685044 made 20 calls to Amet Vikram Chhabra at his mobile phone. Thereafter it is alleged all three Amet Vikram Chhabra, Priyank Khanna @ Prince and Sahil Kumar @ Bunty had gone to Kailsah Colony to recce the area and the house of the victim and hence the location of mobile of Priyank

Khanna @ Prince was at Kailash Colony Metro Station at about 04.54PM on 31.10.2019.

7. It is also alleged prior to 15.11.2019, petitioner along with other co-accused were meeting frequently and this can be proved by cell location chart of all accused person. Their location are at same place on 27.10.2019, 01.11.2019, 02.11.2019, 04.11.2019, 06.11.2019, 08.11.2019, 09.11.2019, 10.11.2019, 11.11.2019, 12.11.2019.

8. On 15.11.2019, the deceased left his house at about 09.00AM and at about 09.05AM Sahil Kumar@ Bunty, Priyank Khanna @ Prince and Amet Vikram Chabra were on call with each other and where discussing the movements of the deceased. On 15.11.2019 at about 07.48 AM, 08.52 AM the petitioner through his mobile number 9873685044 had called Amet Vikram Chhabra and also at about 09.18AM, just after the abduction of the deceased. Thereafter, all the three co-accused took the deceased's body at Jhadsa Chowk, Gurugram so that it could be seen by the petitioner and thereafter the petitioner instructed the co-accused person to dump the body somewhere. At the relevant time, the location of mobiles of the petitioner, Harsh Chabra, Priyank, and Amet Vikram Chabra were at Jhadsa Chowk, Gurugram and then the location of the Amet Vikram Chabra, Priyank was found at Morena, MP, where the body was dumped in a canal.

9. As per the facts alleged on 15.11.2019, the deceased was abducted by the co-accused person and after killing him they dumped his body at Morena, MP. On 16.11.2019, Morena police received an information one unknown dead body of male was lying in a Canal. The dead body was recovered from the canal and inquest report under Section 174 Cr.P.C was prepared; photographs of the body were taken; the post-mortem of

the deceased was conducted and then the body of the deceased was buried. On 06.12.2019, the Delhi Police reached at Morena; the photographs of the body were shown to the Delhi Police, they identified the dead body and on same day the brothers of the deceased were intimated and on 07.12.2019, the brother of the deceased Anil Sharma and Harsh Sharma reached at Morena, MP and identified the photographs as well as the clothes of the deceased. On 08.12.2019, the body of the deceased was recovered *per* orders of SDM and the brothers identified the deceased to be their brother. On 09.12.2019, the place where the deceased was kidnapped was pointed out by co-accused Amet Vikram Chhabra, Priyank, and Sahil Kumar and a pointing out memo at the instance of accused person was also prepared. Later a pointing out memo of the place where dead body was dumped was also prepared.

10. During investigation, CCTV footages of some houses in the vicinity of the victim's house were collected, and was minutely inspected and images of 2 suspects *viz* Priyank Khanna @ Prince and Sahil Kumar @ Bunty, and a white Mahindra Scorpio car driven by Amet Vikram Chhabra was seen captured on CCTV. On close inspection, the Scorpio Car was found bearing registration number *DL3C-BC-8941* which was fake. The allegations are these three kidnapped the deceased from Kailash Colony Metro Station, killed him, took his body to Jharsa Chowk, Gurugram and then to Morena, MP where it was dumped in a Canal. Their comprehensive mobile cell location chart prior to; at and after the incident show their involvement in the case.

11. Though the learned senior counsel for the petitioner argued the mobile number *9873685044* was never used by the petitioner and it

belong to one Harsh Babu, but admittedly the petitioner in the present case was arrested on 04.12.2019, and a mobile phone make model Samsung Black having IMEI No.354465085501663 with one SIM card No.9310088642 was seized from him by the Investigating Officer. Thereafter on 09.12.2019 during the PC remand, one SIM bearing No.9873685044 was recovered at the instance of the petitioner from his house. During the analysis of the CDR of mobile phone bearing no.9873685044, it was revealed the SIM bearing No.9873685044 was used in Samsung Black having IMEI No.354465085501663 from 01.10.2019 – 16.11.2019, which *prima facie* establish the fact the petitioner had bought this SIM only in order to commit the present offence and thereafter, the SIM in question bearing No.9873685044 was used in IMEI No.354110056857580 on 09.12.2019. On 09.12.2019 only four service messages were received on SIM No.9873685044.

12. Further, I may say the status report at page No.6 show the CDR of mobile phone No.9873685044 and that of his father, and they were talking to same set of person and hence Mahesh Babu could not have used such mobile number. Thus, at this stage, where trial is still going on, it cannot be said there is no *prima facie* evidence of involvement of petitioner in the present case. Merely because the prosecution case is based upon the circumstantial evidence it cannot be a ground to release the petitioner on bail if the material so collected *prima facie* complete the chain of events. See *Ishwarji Nagaji Mali vs. State of Gujarat and Another* (2022) 6 SCC 609 and *Mahipal v. Rajesh Kumar alias Polia and Another* (2020) 2 SCC 118 wherein the Court made following observations:

*“14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a **prima facie view** that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this for the court to examine in detail the evidence on record to come to a conclusive finding.*

13. Thus, looking at the allegations, set out above and the stage of the trial, the petitioner is not entitled to bail at this stage.

14. In view of above, the petition stands dismissed. Pending application, if any, also stands disposed of.

15. Nothing opined above shall be treated as an observation on merits of this case.

YOGESH KHANNA, J.

APRIL 24, 2023/DU