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

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Date of decision July 19, 2023

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BAIL APPLN. 678/2023**PRADEEP @ PRINCE**

..... Applicant

Through: Dr. L.S. Chaudhary, Dr. Ajay Chaudhary, Ms. Vinita and Mr. Vishesh Kumar, Advocates.

versus

STATE (GOVT.NCT OF DELHI)

..... Respondent

Through: Mr. Ajay Vikram Singh, APP for the State with Insp. Varun Dalal, PS: Jahangirpuri.

CORAM:**HON'BLE MR. JUSTICE SAURABH BANERJEE****J U D G M E N T**

1. The applicant, by the way of present application, is seeking regular bail under Section 439 of the Code of Criminal Procedure, 1973 in FIR no 39/2020 under Section 302 of the Indian Penal Code, 1860, dated 21.01.2020 P.S. Jahangir Puri, North West Delhi. The chargesheet was filed on 23.04.2020 under Section 173(2) Cr.P.C., wherein Section(s) 120-B/201/34 IPC were added.

2. As per chargesheet, upon receipt of a Police Control Room [**PCR**] call on 21.01.2020 regarding a dead body and the pungent smell emanating therefrom, Assistant Sub-Inspector, P.S. Jahangir Puri along with one Constable reached the concerned spot and found the dead bodies of a 12 year boy @Harshit having a cut wound on his neck from a sharp weapon and of his mother, a 40 year lady @Pooja having a sharp edged wound on her back [*victims/ deceased*].



3. One Smt. Neelam, who used to clean the house of the victims/ deceased, informed the police officers that applicant and his wife @Meenakshi, a co-accused used to frequent their house. The CDR analysis and CCTV footage of 16.01.2020, which happened to be the last day of the victims/ deceased being seen alive, recorded the applicant and his wife entering their house empty handed but leaving with polybags.
4. Thereafter, a knife, a vest and pair of gloves were discovered on the intervening night 28-29.01.2020 based upon a disclosure statement of the applicant on 28.01.2020, whereafter his wife was also arrested on 29.01.2020, and also, jewellery was recovered from both the applicant and his wife.
5. Notice was issued and the Status Report was filed and the Nominal Roll was called for. As per Nominal Roll dated 09.05.2023, wherein it is stated that the applicant has under gone 3 years and 3 months in custody and the overall jail conduct of the applicant has been satisfactory.
6. Learned counsel appearing for applicant submits that the CCTV footage of the applicant and his wife @Meenakshi entering and leaving the house of the victims/ deceased is of 16.01.2020, i.e. 5 days prior to the recovery of bodies on 21.01.2020 and since one of the victim @Pooja and applicant's wife were sex workers there was nothing peculiar about the visits made by him and his wife to her house at odd hours, he further submits that the case of the prosecution is based on circumstantial evidence and that the applicant is not named in the FIR.
7. He submits that the prosecution's theory of last seen alive falls flat as the Post Mortem Report does not disclose the time and date of the death on the victims/ deceased and the jewellery recovered from the applicant and his



wife have not been identified by the brother and mother of the victim @Pooja and the evidence found against him is planted/ fabricated.

8. He further submits that all the material witnesses, including 37 of 45 witnesses, have already been examined. He lastly submits, the applicant has a 5 years old minor daughter and as the co-accused, i.e. wife of the applicant, has since been granted bail vide judgment dated 07.10.2022 by a learned Single Judge of this Court, seeks parity.

9. Learned APP, relying upon the Status Report and strongly opposing the grant of bail, submits that blood stained vest of the applicant and blood stained clothes of the victim @Pooja were recovered on 28/29.01.2020 as per the disclosure statement of the applicant and further the FSL report confirms that blood stains on aforesaid clothes belonged to @Pooja and were also containing the biological stains of the applicant along with pair of gloves containing biological stains of the applicant and further money and jewellery were also recovered from them.

10. He also submits that the applicant cannot seek parity with the co-accused, wife, as she was granted bail on humanitarian grounds in lieu of their 5 year old minor daughter and further because the role of the applicant is different from that of his wife.

11. This Court has heard the learned counsel for the parties and also perused the documents on record.

12. As per facts, an FIR was lodged upon receipt of a PCR call, victims/ deceased were found on 21.02.2020, thereafter the applicant was arrested within seven days, i.e. on 28.02.2020 and on his disclosure statement, evidence was recovered on the intervening night of 28/29.02.2020. Then, based on his disclosure statement, other co-accused being his wife was also



arrested on the very next day, i.e. 29.02.2020, thus, there was swift action on the part of the State, leading this Court to conclude that there could not have been any foul play.

13. During the course of the Investigation, biological stains were found on the vest, gloves and clothes of the applicant and not on the co-accused his wife @ Pooja. The 'CONCLUSION' in the FSL report mentions as under:

“5. The biological stains present on the exhibit '12a' (A pair of gloves) are from the source of exhibit '15' (Blood gauze of accused Pradeep)

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7. The biological stains present on the source of exhibit '12b' (Banyan of accused) are from the source of exhibit '1' (Blood gauze of the Pooja) & exhibit '15' (Blood gauze of accused Pradeep).”

14. Considering that the Police machinery was swift in making the arrest within seven days and the evidence on record, *prima facie*, in the opinion of this Court, there is more than a strong probability for this Court to believe that the applicant was involved in commission of the offence.

15. As per chargesheet, the applicant was hesitant in joining the investigation, which is a primary requirement recognised by the Hon'ble Supreme Court in **Satender Kumar Antil vs. Central Bureau Of Investigation** (2022) 10 SCC 51, furthermore, taking into account the CDR analysis and the CCTV footage coupled with the FSL report and gauging from the nature and gravity of the offence and the severity of the punishment in the event of conviction this Court feels that this is not a fit case for the applicant to be granted bail at this stage. In the opinion of this Court, if the applicant is granted bail there is a likelihood of the applicant hampering the ongoing investigation and due dispensation of justice.



16. It is trite law that the Court should be circumspect and also cautious to consider the nature and the background of offence while granting bail to an accused, especially if the offences are involving heinous crimes like the one under Section 302 IPC [*Re.: Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Kohli) & Anr.* (2021) 6 SCC 230]

17. Furthermore, in the considered opinion of this Court, though the co-accused wife @Meenakshi has already been granted bail, however, that in itself is not a reason for the applicant to be granted bail on the ground of parity as the case of the applicant stands on a different footing altogether. In any event, as per settled law, while granting bail on the sole ground of parity the Court must consider the totality of circumstances and scrutinise every aspect instead of capriciously granting bail to an accused. [*Re.: Neeru Yadav vs. State of Uttar Pradesh* (2014) 16 SCC 508].

18. Thus, the factual matrix involved and the settled legal position in their entirety lead this Court to the conclusion that there is no merit in the present application for granting bail to the applicant at this stage.

19. In view of the aforesaid, the present application seeking grant of bail under Section 439 of the Cr.P.C. in FIR no 39/2020 under Section 302 IPC dated 21.01.2020 P.S. Jahangir Puri, North West Delhi, is dismissed.

20. Needless to say, observations made on the merits of the matter, if any, are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits of the matter.

21. Accordingly, the present application is disposed of.

SAURABH BANERJEE, J

JULY 19, 2023/So