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

% Judgment delivered on: 01.11.2023

+ **BAIL APPLN. 1238/2023**

PRADEEP

..... Petitioner

Through: Mr. R.S. Malik, Mr. Sahil Malik and
Mr. Abhishek Kumar, Advs.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Aashneet Singh, APP for State
with Insp. Mukesh Kumar and Insp.
Rajiv PS Mangolpuri.
Mr. Vaibhav Maheshwari, Adv. for
complainant.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 Cr.P.C seeking grant of regular bail in connection with the FIR No. 0297/2021 under Sections 302/34 IPC registered at P.S. Mangolpuri.
2. The case of the prosecution as borne out from the status report is that on 05.04.2021, information was received that a dead body was lying in a park. Accordingly, police officials reached the spot, where they found a person in an unconscious state having multiple injuries on his face. Thereafter, efforts were undertaken to establish the identity of the body.



3. In the meantime, one person namely, Naresh reached the spot and identified the unconscious person as his brother Chanderbhan s/o Sobharam R/o L-956, Mangolpuri, New Delhi who was missing since 04.04.2021. Naresh specifically alleged that the deceased's scooty was found parked outside the shop of witness-Pradeep, who in-turn had informed the family of the deceased that the deceased went with Pradeep (petitioner herein) and Raju on their motorcycle. The aforesaid FIR thus, came to be registered.
4. During course of investigation, statement of witness-Pradeep was recorded under Section 161 Cr.P.C. who stated that the deceased had parked his scooty in front of his shop and went with petitioner-Pradeep and Raju on their motorcycle. After some time, witness-Pradeep called the deceased to collect his scooty but the deceased did not return to collect the same.
5. During further course of investigation, statements of other witnesses were recorded. Raju and the petitioner were also called and questioned, who confessed their involvement and stated that Chanderbhan used to say bad words for them after getting drunk. Therefore, they had decided to kill him. They killed him with stones found on the road and took his phone also. Thereafter, they consumed wine in Avantika Rohini and went to Swaroop Nagar and thereafter returned back. It was revealed by Raju as well as the petitioner that they had left their phones at their home so that their location could not be tracked. They had thrown the phone and knife used in this murder in Swaroop Nagar and thrown the stone in the side of park.
6. Sequel to the above, the present petitioner was arrested by the police on 07.04.2021.



7. It is also the case of the prosecution that a blood-stained stone was recovered at the instance of co-accused Raju from the park. Further, at the instance of both the accused, blood-stained clothes were recovered from their respective houses. However, DNA could not be generated from the clothes of the accused persons.

8. Mr. Malik, learned counsel for the petitioner submits that there is no eye witness to the offence which has allegedly been committed by the petitioner and the case rests merely upon circumstantial evidence.

9. He submits that Jaipal, the brother of the deceased, who was examined as PW-1, has completely demolished the case of the prosecution, in as much as, in his cross-examination he has admitted that after the death of deceased he had given an interview in T.V. on 'Ham Vatan' channel where he narrated that his deceased brother had neither animosity with anybody nor there was any monetary transaction with anyone. PW-1 further stated that his brother was taken by some people sitting in Santro car, which is contrary to the prosecution version that the petitioner with co-accused Raju had taken deceased Chanderbhan on a motorcycle.

10. He submits that the last seen witness Pardeep, who was examined as PW-2, has not supported the case of the prosecution and was declared hostile and despite being cross examined by the learned APP nothing could be elicited from him against the petitioner.

11. He submits that the testimony of PW-3 (who is the relative of the deceased) suffers from material contradiction vis-a-vis his statement recorded under Section 161 Cr.P.C.

12. He invites attention of the Court to the testimony of Vinod Kumar, who was examined as PW-4, to contend that the said witness has not



identified the petitioner with certainty; therefore, his testimony cannot be relied upon.

13. He further submits that the case of the prosecution is that deceased along with the petitioner had consumed liquor prior to his death, however, report of the FSL after analyzing the viscera of the deceased does not support the version of the prosecution.

14. He contends that charge-sheet in the present case has been filed and investigation *qua* the petitioner is complete, the trial is underway and no further recovery is to be effected from the petitioner, therefore, no useful purpose will be served in keeping the petitioner behind bars. Further, the prosecution has cited 26 witnesses in the charge-sheet and the conclusion of trial is going to take considerable time.

15. *Per contra*, the learned APP appearing on behalf of the State has argued on the lines of the Status Report. He submits that the present petitioner has been accused of a grave and serious offence, therefore, he may not be enlarged on bail. He submits that the deceased was last seen with the petitioner and the co-accused, which fact has been corroborated by PW-4/Vinod Kumar (owner of egg *rehri*) and PW-2/Pradeep. He further submits that the quarrel which took place between the deceased and the accused has also been corroborated by PW-4/Vinod Kumar.

16. Learned APP for the State has also placed reliance on the CCTV footage to contend that during course of investigation CCTV footage of nearby area were checked and it was found that the two accused and the deceased went towards park and after sometime only Raju and Pradeep/petitioner were seen in the camera fixed at wine shop at Avantika,



Rohini (approx. 2-3 kms. from the spot) and deceased Chanderbhan was missing.

17. I have heard the learned counsel for the petitioner and the learned APP for the State and have also perused the documents on record.

18. Before considering the rival contentions of the parties, it is imperative to bear in mind the factors which are to be taken into account at the time of considering a bail application. Reference may be had to the decision of the Supreme Court in *State of UP v. Amarmani Tripathi*, (2005) 8 SCC 21, where the factors to be considered in a bail application were spelled out as under:

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)



"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)"

(emphasis supplied)

19. Reference may also be had to the decision of the Supreme Court in *Satish Jaggi v. State of Chhattisgarh*, (2007) 11 SCC 195, wherein the Supreme Court held that in cases of non-bailable offences, the primary factor to be taken into account while considering a bail application is the nature and the gravity of the offence. The observations read as under:

"12. Normally if the offence is non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned



*Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. **At the stage of granting of bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.**"*

(emphasis supplied)

20. Likewise, in *Lt. Col. Prasad Shrikant Purohit v. State of Maharashtra, (2018) 11 SCC 458* the Supreme Court observed that for the limited purpose of seeing whether there exists a *prima facie* case in favour of the accused warranting grant of bail and for indicating reasons therefor, the evidence can be looked. The relevant observations reads thus :

*"29.The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. **Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non application of mind...**"*

(emphasis supplied)



21. Reverting to the facts of the present matter, the case of the prosecution is that the deceased and the petitioner had consumed alcohol and thereafter a fight ensued between them in which the petitioner committed the alleged offence. However, it is not in dispute that at the time conducting the post mortem, the viscera of the deceased was preserved and the same was sent to FSL for examination, the report thereof reveals "*ethyl and methyl alcohol could not be detected*". Thus, the FSL report does not support the case of the prosecution.

22. The brother of deceased Jaipal/PW-1 in his cross-examination has admitted having given an interview to 'Ham Vatan' channel where he stated that Chanderbhan had neither any animosity nor money transaction with anyone. Further, the deceased was taken by people sitting in a Santro car. The testimony of PW-1 is evidently contradicts the prosecution story that the deceased Chanderbhan was taken by the petitioner and co-accused Raju on a motorcycle.

23. The contention of the learned counsel for the petitioner that the last seen witness i.e. PW-2/Pardeep has not supported the case of the prosecution does not seem to be without substance. A perusal of the deposition of PW-2 shows that the witness has not mentioned the name of the present petitioner in his examination-in-chief. However, when cross-examined by the learned APP for the State after he resiled from his statement recorded under section 161 CrPC, PW-2 even denied the suggestion that the deceased went on a motorcycle with Raju and petitioner/Pradeep. The deposition of PW-2 recorded on 06.02.2023 reads as under:



"I am running a general store Shop No. L-1/4, DDA Market, Mangolpuri, Delhi.

On 04.04.2021, Sh. Chander Bhan who is the resident of L-Block, Mangolpuri area and I had general acquaintance with him, it was around 1 p.m, he came and parked his scooty in front of my shop and asked me to look after the same. Thereafter, he went somewhere. I do not know with whom he had gone. I called Chander Bhan at around 7 p.m. for making enquiries from him as to when he would return. He replied that he would come within few minutes to take back his scooty. Thereafter, I closed my shop and went to my home. On the next day, when I reached my shop at around 7 a.m, I found the said scooty parked in front of my shop at the same place. The brother of Chander Bhan namely Naresh met me and I asked him to take the scooty. Naresh informed me that Chander Bhan had not returned home since last evening. Thereafter, I along with Naresh started searching for Chander Bhan.

At this stage, Ld. Addl PP for State seeks permission to cross-examine the witness as he is resiling from his previous statement given to the police. Heard. Allowed.

XXX by Ld. Addl. PP for the State.

*I do not recollect whether it was 4 p.m when Chander Bhan parked his scooty in front of/near my shop, however, it was after 1 p.m. **Police had not recorded my statement. Vol. Police had only asked my name and address. It is wrong to suggest that I am deposing falsely that police had not recorded my statement.***

It is wrong to suggest that Chander Bhan informed me that he was going with his friend (confronted with statement Mark PW-2/P1 from point A to AI is read over, explained and shown to the witness and the witness is confronted with this portion to which the witness denies to have made any such statement). It is wrong to suggest that I am deposing falsely.

It is wrong to suggest that thereafter, Chander Bhan went on motorcycle with Raju and Pradeep, residents of L-Block, Mangolpuri and Raju was driving the bike (confronted with



statement Mark PW-2/P1 from point B to B1 is read over, explained and shown to the witness and the witness is confronted with this portion to which denies to have made any such statement). It is wrong to suggest that I am deposing falsely."

24. A perusal of the testimony of Sunil Kumar, who was examined as PW-3, shows that the said witness has also not stated in his examination-in-chief that Chanderbhan had told him over phone that petitioner/Pradeep was with him, rather he states that Chanderbhan had told him over phone that Raju and Manish were with him. However, when cross-examined by the learned APP for the State, he mentions the name of Pradeep and clarified that name Manish was inadvertently given by him in his examination-in-chief. The relevant testimony of PW-3 reads as

"It was 04.04.2021 at about 08:36 p.m, I had received a mobile phone on my the above said mobile number. It was the call of Chandrabhan. Chandrabhan called from his mobile no. 9211843641. Two days before I was blessed with a birth of a baby girl. Chandrabhan talked to me and said on this mobile phone "Bhai Tushe Beti Hui Hai, Tune Mujhe Bataya Nahin. Chandrabhan further asked on phone about my location and I informed Chandrabhan that I was present in the gali and going inside the house. Thereafter, I inquired from Chandrabhan about his whereabouts and upon which he replied that he would come to my house and would meet me. (Objected to by the Ld. Counsel being hearsay)(the objection shall be decided at the final stage). While I was talking to Chandrabhan on phone, I heard the voice sound of 2-3 person which was coming from the background side of Chandrabhan. Upon which I inquired from Chandrabhan as to who were accompanying him. Chandrabhan replied that Raju and Manish were present with him. I further inquired from him about his whereabouts and then another voice in the background "bhai phone kaat de. After that the phone was disconnected by the side of



Chandrabhan. After entering my house, I informed would come at out house and I asked my wife to prepare some food. After 2-3 minutes, I had made a call to Chandrabhan on his mobile phone at around 08:41 p.m, but the mobile phone was found to be switched off.

On the said night, my bua namely, Deva (mother of Chandrabhan) and Geeta (sister of Chandrabhan) visited my Jhuggi as they were searching for Chandrabhan and I informed them that I had talked to Chandrabhan at around 8:36 P.M.

At this stage, Ld. Addl. APP seeks permission to cross-examine the witness as he is resiling from his statement qua the presence of accused Pradeep with Chandrabhan.

XXXXXXX by Sh. K.D Pachauri, Ld. Addl. PP for the State.

*The police had recorded my statement. **It is correct that I stated to the police that Chandrabhan informed that he was present with his friend Raju and Pradeep.** (Vol.) I had informed the IO many times that Pradeep was also present with Chandrabhan. It is correct that I had stated the name of Pradeep to the IO. Chandrabhan had informed that he was present with Raju and Pradeep (Vol.) **The name of Manish was inadvertently stated by me in confusion, I do not know Raju and Pradeep by face and I never met with them.***

25. Vinod Kumar, who was examined as PW-4, has stated that the petitioner may be amongst the three persons he had seen on the day of incident but he is not sure. Even during his cross-examination by the learned APP for the State, after he was declared hostile, PW-4 has denied the suggestion that he informed the police, the name of the three persons as Raju, Pradeep and Chanderbhan of Mangolpuri.

26. The learned APP has referred to the status report to contend that the CCTV footage shows the three persons together but after sometime only Raju and petitioner/Pradeep were seen in the camera fixed at wine shop at



Avantika, Rohini. Intriguingly, the CCTV footage does not find mention in the list of enclosures/details of documents mentioned in the chargesheet. Besides that, none of the witnesses have been shown the CCTV footage in the court to establish the identity of the persons seen in the CCTV footage.

27. The present is a case involving circumstantial evidence and in such a case chain of evidence must be so complete as to not leave any reasonable grounds for a conclusion consistent with innocence of the accused and facts established should be consistent only with hypothesis of guilt of accused.

28. The question of credibility and reliability of the prosecution witnesses can only be tested during the trial, but it cannot be overlooked that PW-2/Pradeep who has been cited as witness by the prosecution to prove last seen theory, turned hostile and did not support at all the version of the prosecution. Similarly, it cannot be negated that the testimonies of other prosecution witnesses noted above, also have the potential of creating doubt in the prosecution story, but it is for Trial Court to assess their probative or evidentiary value at the appropriate stage.

29. At this stage the evidence which has come on record and other circumstances discussed above, clearly, tilt the balance in favour of the petitioner for grant of bail.

30. It is also well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account



and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time¹.

31. Out of 26 witnesses cited by the prosecution, only 04 public witnesses have been examined till date, therefore, the large number of witnesses are yet to be examined which will inevitably lead to a protracted trial.

32. The petitioner is in custody for more than two and a half years. The investigation being complete, in the facts and circumstances of the present case, no useful purpose will be served in keeping the petitioner in judicial custody. It is not the case of the prosecution in the status report that the petitioner has a criminal record or he is a flight risk.

33. Insofar as the apprehension expressed in the status report that the petitioner may threaten the witnesses if enlarged on bail, suffice it to say that the said apprehension could be allayed by imposing appropriate condition on the petitioner.

34. Considering the above factors in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/Jail Superintendent/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner will not leave the city without prior permission of the Court.

¹ *Vinod Bhandari v. State of Madhya Pradesh*, (2015) 11 SCC 502



- b) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - c) Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
 - d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses or any family members of the witnesses.
25. The petition is disposed of.
26. Nothing stated herein shall be deemed to be an expression on the merits of the case of the respective parties.
27. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
28. Order *dasti* under the signatures of the Court Master.
29. Order be uploaded on the website of the Court forthwith.

VIKAS MAHAJAN, J

NOVEMBER 01, 2023
MK