



\$~15

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

% ***Date of decision: July 20, 2023***

+ **BAIL APPLN. 1373/2023**

SHADAB

..... Applicant

Through: Mohd. Aakil and Mohd. Danish
Ahmed, Advocates

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Ajay Vikram Singh, APP for the
State with Inspector Sanjeev Sharma,
TI/TNC and Inspector Anil Kumar,
ATO/Shakurpur

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. This is an application filed by the applicant under Section 439 of Code of Criminal Procedure, 1973 seeking regular bail in FIR No.457/2020 dated 30.10.2020 under Section 302 of the Indian Penal Code, 1860 registered at Police Station Shakarpur, Delhi.
2. The present applicant was formally arrested in the said case on 30.10.2020. Charges have been framed by the learned Trial Court and the trial is at the stage of prosecution evidence. Considering the gravity involved, four regular bail applications have been filed by the applicant, of which, three have been dismissed by the Trial Court and one was withdrawn by the applicant.



3. The present FIR was filed based on a disclosure statement of the applicant, made to the police on 29.10.2020, informing about the death of his live-in partner, the victim. The accused found the victim hanging from the fan on 29.10.2020, when he returned from his home in Shastri Park at 12:00 AM on 29.10.2020. He made a call to the PCR, subsequent to which, basis his disclosure statement, the FIR was recorded.
4. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present FIR on unfounded allegations as he was never present at the place of incident. He submits that apart from PW4 and PW6, no other prosecution witness has identified the applicant and also that, in fact, no prosecution witness has been able to place him at the place of incident on 28.10.2020. He submits that the PW2, a material witness, has turned hostile and the prosecution has no other substantial or circumstantial evidences to substantiate his complicity in the commission of the offence. He further submits that the husband of the deceased, PW7, has stated that the deceased was not inclined to return and also that she was living with the applicant out of her own free will and that he has never made any complaint against the applicant.
5. The learned counsel for the applicant submits that the applicant has been unduly incarcerated for almost 2 years 6 months, when the investigation in the case is already complete and the trial is already at the stage of prosecution evidence and the material witnesses stand discharged.
6. Notice was issued and the Status Report and the Nominal Roll was called for. According to the Nominal Roll of the applicant, his physical condition is stable and his conduct is satisfactory. Further, he has undergone a period of 2 years 6 months and 24 days in custody. Lastly, there are no



pending FIRs/ cases against the applicant and he has never been convicted in the past.

7. The State in its Status Report has opposed the grant of bail to the applicant stating that in the biological examination of the underwear of the deceased, semen was detected and that the applicant grossly misrepresents the occurrence of events. Lastly, it is stated that out of 25 witnesses, statements of only 13 witnesses have been recorded so far and if the applicant is released on bail there is likelihood of his influencing the witnesses leading to the hampering of the trial underway.

8. Learned APP for the State submits that there was a quarrel between the applicant and deceased on the street in front of their house when the applicant broke the phone of the deceased, which resulted in the deceased going inside the house and bolting the door. The applicant then entered the house from the back door and saw the deceased standing on a bucket with one end of a saree around her neck and the other end hanging from the fan, he pulled the other end till the victim died. Then after locking the house, the applicant went to his house in Shastri Park only to return on 29.10.2020 morning. It was thereafter, that he made a PCR call fearing of getting implicated in the case. He also states that the allegations are serious in nature and the applicant be not released on bail.

9. This Court has heard the learned counsel for the applicant and also the learned APP for the State and also perused all the relevant documents on record.

10. Considering the nature of the heinous offence involved and the gravity of the accusations coupled with the fact that the quarrel happened on the street and the surrounding circumstances are suspicious enough for



giving rise to a serious doubt in the mind of this Court as there were injuries on the deceased which suggested of a scuffle prior to her demise, in the opinion of this Court, the applicant is not entitled to grant of bail at this stage. [*Re.: Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) & Anr.* (2021) 6 SCC 230].

11. In any event, the allegations contained are serious in nature. Furthermore, the fact that there are material public witnesses yet to be examined, there is a probability of the applicant influencing the witnesses leading to the hampering of the trial underway. As such, in view of the seriousness of the offence involved, in the opinion of this Court, there is no merit in the present application for grant of bail to the applicant at this stage.

12. Needless to state, observations made on the merits of the matter, if any, are only for the purposes of adjudicating the present application for the grant of bail and shall not be construed as expressions on the merits of the matter.

13. Accordingly, the present application of the applicant for granting bail is dismissed.

SAURABH BANERJEE, J

JULY 20, 2023/akr