



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

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**Reserved on : 12.10.2023**

**Pronounced on : 07.11.2023**

+ **BAIL APPLN. 1918/2023**

MAYANK ANTIL

..... Petitioner

Through: Mr. Sunil K. Mittal, Mr. Kshitij Mittal, Mr. Anshul Mittal, Mr. Harshit Vashisht, Mr. Sarthak Tagra and Ms. Kaadambini Sharma, Advocates.

versus

THE STATE OF NCT DELHI

.... Respondent

Through: Mr. Amit Ahlawat, APP for the State with Insp. Deepak Malik and Insp. Naresh Kumar.  
Mr. Ajay Kumar Pipaniya, Mr. Mukesh Kumar Pipaniya, Ms. Nikita Garg, Mr. Sandeep Kumar, Mr. Harjas Pratap Singh Anand and Ms. Deeksha, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**ORDER**

**RAJNISH BHATNAGAR, J.**

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C for grant of regular bail in case FIR No. 330/2021 U/s 302 IPC registered at Police Station Maurya Enclave.
2. In brief, the facts of the case are that on 25.04.2021, an information

**BAIL APPLN. 1918/2023**

**Page 1 of 7**



vide DD No. 13 A at 06:36 a.m. was received in the police station Maurya Enclave, Delhi regarding a dead body lying in SU Park, Pitampura, Delhi. IO alongwith the staff reached at the spot, where dead body of a male was found lying. On the inspection of the dead body injury mark was found present on forehead and one piece of cloth was tied around the neck of the deceased.

3. On enquiry, the deceased was identified as Saksham Gupta S/o Manish Gupta R/o TU-76, Ground Floor, Pitampura, Delhi, age 18 years who was found to be missing vide DD No. 48 A, Dated 21.04.2021, PS Maurya Enclave. On the statement of complainant Manish Gupta (father of the deceased) the present case was registered and investigation was taken up. The complainant in his statement has specifically named the petitioner to be responsible for the death of his son.

4. I have heard the Ld. counsel for the petitioner, Ld. APP for the state assisted by the Ld. counsel for the complainant, perused the Status Report and also perused the records of this case.

5. It is submitted by the Ld. counsel for the petitioner that the star witnesses of the prosecution i.e. PW 1 and PW 2 during their cross examination have made various contradictions which belies the case of the prosecution. It is further submitted that PW 1 has stated in his cross examination that he was informed about the dead body by a lady but the investigating agency has not made any efforts to search for the said lady nor her statement was recorded. It is further submitted that as per PW 1, where the dead body was found there were jhuggies wherein 5-6 persons were



living and they left the jhuggies 2-3 days prior to the day of recovery of dead body but the investigating agency did not make any efforts to search for those persons. It is further submitted that PW-1 has stated in his cross examination that his signatures were taken on blank papers by the police officials. It is further submitted that the testimony of PW 2 clearly belies the case of the prosecution. It is further submitted that the prosecution in a planned manner has shown false recovery from the petitioner vide seizure memo dated 26.04.2021 of ear pods and mobile phone of the deceased which is contrary to the statement of PW-2. According to PW-2 the recovery of ear pods and mobile phone were made on 25.04.2021 when the dead body was recovered. It is further submitted that there is no eye witness to the crime and the petitioner has been arrested only on the hypothesis of his chatting with the deceased. Ld. counsel for the petitioner has relied upon: *Babu Singh Vs. State of U.P. (1978) 5 SCC 579* and *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*. He has also relied upon *Sumer Singh Vs. State, Bail application No. 750/2007 decided by this Court on 03.09.2007*; *Mahesh Gupta Vs. State, Bail Application No. 2585/2008 decided by this Court on 01.04.2009* and *Jyoti Vs. State, NCT of Delhi, Bail Application. No. 4172/2020 decided by this Court on 04.08.2021*.

6. It is further submitted by the Ld. counsel for the petitioner that GD No. 0048A was the first document prepared in this case which was recorded on the basis of the statement of the father of the deceased who has not placed any suspicion on anybody, so it is argued that the petitioner has been falsely implicated. It is also submitted by the Ld. counsel for the petitioner



that the arrest memo, personal search memo have been witnessed by Jeet Pal but seizure memo of mobile phone make Samsung with black cover and the ear pods of the deceased has not been witnessed by the said Jeet Pal which clearly shows that this document has been manipulated as the IO has failed to obtain the signatures of Jeet pal on the seizure memo.

7. On the other hand, Ld. APP for the state assisted by the Ld. counsel for the complainant has vehemently opposed the bail application and argued on the lines of the Status Report. It is submitted by the Ld. APP that the deceased was lastly seen with the petitioner which is evident from the CCTV camera of the area and the deceased and the petitioner were seen together going in the park in the morning at about 8:00 a.m. on the date of the incident which is 21.04.2021 and after about an hour i.e. at about 9:00 a.m. the petitioner was seen coming out of the park alone. It is further submitted by the Ld. APP that even the last location of the mobile phone of the deceased and the petitioner were also matched. It is further submitted by the Ld. APP that this is not the stage to deeply analyze the testimonies of the public witnesses examined. It is further submitted by the Ld. APP that the parents of the deceased are yet to be examined. Ld. APP has relied upon *Satish Jaggi Vs. State of Chhattisgarh and others* (2007) 11 Supreme Court Cases 195.

8. During the course of the arguments Ld. counsel for the petitioner has placed much reliance on the statement of PW Jeet Pal recorded U/s 161 Cr.P.C. and the documents witnessed and not witnessed by him. In the instant case, PW Jeet Pal on which the Ld. counsel for the petitioner has heavily relied is yet to be examined. This witness is the witness to the arrest



memo and personal search memo but not to the seizure memo and because of this reason, the Ld. counsel for the petitioner had argued that the case of the prosecution in regard to the recovery cannot be believed. But this is not the stage to credit or discredit this witness as he is yet to be examined and why this PW has not been made a witness to the seizure memo could only come on record once this witness is examined and cross examined and after the recording of the testimony of the IO who will be in a better position to disclose about the fact of non witnessing of seizure memo by this PW i.e. Jeet Pal.

9. As far as the arguments that in GD No. 0048 A the father of the deceased has not named anybody, this goes to show that the father of the deceased had no intention to falsely implicate anybody and it was only upon the investigation done that the police had zeroed in on the petitioner as the perpetrator of the crime and arrested him.

10. It has also been argued by the Ld. counsel for the petitioner that the last seen evidence is a very weak type of evidence but this is not the stage to deeply analyze the material produced by the prosecution as the material witnesses are yet to be examined. The petitioner was seen coming out of the place of the incident within an hour of his entering the said park where as per the prosecution, the murder had taken place. CCTV footage reveals that the petitioner was wearing a blue shirt belonging to the guard of the park and this shirt has been identified by the guard. So this clearly shows the presence of the petitioner inside the park from 8:00 a.m to 9:10 a.m. Ld. APP for the State during the course of the arguments, also pointed out that the petitioner was wearing a white T-shirt while he was seen going



alongwith the deceased and when at about 9:00 a.m he had come out of the park and captured in the CCTV footage, he was wearing a blue shirt of the guard over his white T-shirt which is slightly visible under the blue shirt.

11. It has also been argued by the Ld. counsel for the petitioner that the testimony of PW 2 totally belies the case of the prosecution and also creates doubt on the recoveries alleged to have been made at the instance of the petitioner. But this is not the stage to deeply analyze the testimony of PW 2 and other prosecution witnesses as it might prejudice the case of either of the parties.

12. Ld. counsel for the petitioner has heavily placed reliance on ***Mahesh Gupta Vs. State and Sumer Singh Vs. State (supra)***. In my opinion, the said two judgments were passed on the bail applications on their own merits and in the facts and circumstances of those particular cases. No two criminal cases are alike and there is no dispute to the settled principle of law that at the time of hearing of the bail application though the testimony of the witnesses cannot be analyzed in detail or they cannot be threadbare examined but the Court is not prohibited from having a bird eye view on the testimony of the witnesses. Ld. counsel for the petitioner has also placed reliance on ***Jyoti Vs. State, NCT of Delhi (supra)*** but in that case the petitioner was a lady and the facts of the said case were totally different and the said case was decided on the basis of its own facts.

13. In the instant case, at this stage disbelieving the recoveries or the testimony of the witnesses recorded will prejudice the case of either side and one cannot lose sight of the fact that two material witnesses are yet to be



examined and PW Jeet Pal is also to be examined for the purpose of believing or disbelieving the recoveries. Looking into the facts and circumstances of the present case, this is not the stage to deeply analyze the testimonies of the witnesses or the documents exhibited or still to be exhibited. Reliance can be placed upon *Satish Jaggi Vs. State of Chhattisgarh and Others (supra)*.

14. In view of the discussions mentioned hereinabove, the bail application lacks merits and the same is accordingly dismissed.

15. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

**RAJNISH BHATNAGAR, J**

**NOVEMBER 07, 2023**

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