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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: July 20, 2023

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BAIL APPLN. 1945/2023

ABUZAR @ ANTA

..... Applicant

Through: Mr. Rajesh Mahajan and Mr. Harish Chand, Advocates

Versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Kumar, APP for the State with ACP Sanjay Dutt and SI Dev Kumar, Special Cell/SWR, Janakpuri

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. This is an application for grant of regular bail under Section 439 Code of Criminal Procedure, 1973 in FIR No.152/2008 dated 07.04.2008 under Sections 120B/174A/302/34 of the Indian Penal Code, 1860 and under Sections 25/27/54/59 of the Arms Act, 1959 at Police Station Kalkaji, Delhi.

2. The present FIR pertains to murder of the deceased, one Arun Gupta in broad day light on the main road in Kalkaji, Delhi while he was going to office in his car. The applicant, being one of the accused named in the present FIR, was evading arrest during investigation resulting in him being declared a Proclaimed Offender [PO] on 13.10.2008. Then the applicant was finally arrested almost six years later on 06.09.2014 with respect to some other FIR registered against him. During interrogation, the applicant not



only admitted his involvement but also divulged his role. Thereafter, the charge sheet was filed on 03.12.2014.

3. Learned counsel appearing for the applicant submits that though the applicant was declared a PO, however, much has changed since then as he has been granted interim bail twice after that/ recently, once vide order dated 27.05.2022 by this Hon'ble Court and another vide order dated 24.02.2023 by the court of learned ASJ. He further submits that the applicant has been diligently adhering to the terms of the bail as set out therein.

4. He further submits that the applicant has been languishing in jail since more than eight years and as the examination of prosecution witnesses is yet to be completed there is no purpose of keeping him behind bars.

5. He then submits that the sentence of all the co-accused persons has already been suspended. Lastly, relying upon *Sanjay Suri v. Delhi Admn.*, 1988 Supp SCC 160 and *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608, he submits that an undertrial prisoner whose trial is yet to be concluded cannot be held in custody for an indefinite period.

6. Notice was issued and Status Report was filed and the Nominal Roll was called for.

7. As per the nominal roll, the overall jail conduct of the applicant has been satisfactory.

8. Learned Additional Public Prosecutor for the State opposing the grant of bail to the applicant submits that the applicant is involved in a heinous offence, murder, which was committed in broad day light. He submits that the applicant was absconding for almost six years before being declared as a Proclaimed Offender.



9. He submits that during investigation the applicant identified the place of occurrence of the offence and in his disclosure statement he is revealed to have given the weapon of offence and two live cartridges. He also submits that though the applicant denied the Test Identification Parade [TIP] proceedings but he was identified by a witness.

10. He further submits that as per CFSL, his voice samples were found matching in the intercepted calls with other co-accused. He lastly submits that the other co-accused persons have already been convicted by the learned Trial Court and have been awarded a sentence of Life Imprisonment, against which their respective appeals are pending before this Hon'ble Court.

11. 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.

12. Gauging the nature and gravity of the accusation that the applicant is involved and has played an active part in the heinous offence of murder committed in broad day light and the fact that the applicant evaded arrest during investigation for almost six years, in the considered opinion of this Court, the applicant is not entitled for grant of regular bail at this stage, as his release is likely to hamper the dispensation of justice. Further, considering the seriousness of the offence involved, in the opinion of this Court, pending trial, there may be a likelihood of the applicant threatening/ influencing the witnesses, as a number of material public witnesses are yet to be examined. In view thereof, this Court is of the opinion that there is no merit in the present application for grant of regular bail to the applicant at this stage.

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



the matter.

14. Accordingly, the present application of the applicant for grant of regular bail is dismissed.

SAURABH BANERJEE, J

JULY 20, 2023/So