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IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 6th October, 2023**

+ BAIL APPLN. 2367/2023

AMIT SINGH BHANDARI@AMIT PAL

..... Petitioner

Through: Ms. Dolly Sharma, Advocate.

versus

STATE

..... Respondent

Through: Mr. Aman Usman, APP for State
with Inspector Vijay Singh, P.S.
Kapashera.**CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeks regular bail in case FIR No. 409/2015, under Sections 302/397/411/120B/34 of the Indian Penal Code, 1860 ('IPC'), registered at PS. Kapashera, Delhi.
2. It is the case of the prosecution that on 22.09.2015, a PCR call was received *vide* DD Entry No. 18A and 19A and acting on it, the concerned police personnel reached H.No. 154/3, Dundahera Road, Bijwasan, Delhi.



They were apprised that a lady namely, Bimla Devi, had been taken to Columbia Asia Hospital by her son. Upon reaching Columbia Asia Hospital, the police was informed that the aforesaid lady was declared brought dead. Thereafter, statement of complainant, Sh. Gaurav Bhardwaj, i.e., son of the deceased, was recorded and present FIR was registered under Section 302 of the IPC at PS. Kapashera. It is the case of the prosecution that during the course of further investigation, on 12.10.2015 Crime Branch South, P.S. R.K. Puram gave information regarding the arrest of the present applicant. It is further the case of the prosecution that the present applicant, on further interrogation disclosed that he was residing at H.No. 154/3, Dundahera Road, Bijwasan, Delhi and had to pay 3 months' rent of Rs. 20,000/- to the landlord/owner Sh. Shiv Ganesh Bhardwaj, husband of the deceased. He further disclosed that the deceased used to pester him to pay the rent and since he was unable to pay the same, he contacted his friend Ashwani from Allahabad, Uttar Pradesh and informed that the landlady had a lot of money and gold and it can be looted after committing the murder. It was further disclosed that they, in turn involved two other associates, namely, Chhuttan and Ajju in the said conspiracy. In pursuance of the aforesaid conspiracy, it was disclosed that on 22.09.2015, they looted the home of the deceased after committing her murder. It is the case of the prosecution that at the instance of the present applicant, the aforesaid co-accused persons, namely, Ashwani Kushwah, Vijay Kumar Kushwaha @ Chhuttan and Ajay Kumar Patel @ Ajju were arrested and the looted articles were recovered from their possession/at their instance. It is further the case of the prosecution that one witness, namely, Nitin Khandelwal identified the co-accused persons, namely,



Vijay Kumar Kushwaha and Ashwani Kushwah as the persons who were seen coming out from the gate of house of the deceased on 22.09.2015. It is also the case of the prosecution that mobile phone belonging to the deceased was recovered at the instance of the applicant.

3. Learned counsel appearing on behalf of the applicant submitted that the present applicant has been in judicial custody for the last 5 years. It was submitted that the case of the prosecution is circumstantial in nature and there are no eye-witnesses to the incident. It was further submitted that the present applicant had been granted interim bail on the grounds of the HPC Guidelines, and he surrendered in time, without misusing the liberty granted to him. Learned counsel appearing on behalf of the applicant further submitted that the case of the prosecution against the present applicant is only based on disclosure statements. It was pointed out that nothing has been placed on record to demonstrate that the present applicant was a tenant of the deceased's husband. It was further submitted that the recovery of the mobile phone at the instance of the present applicant also cannot be relied upon as the IMEI numbers are different. It was also submitted that no evidence has been placed on record to show that the phone recovered at the instance of the present applicant belonged to the deceased.

4. *Per contra*, learned APP for the State submitted that the co-accused persons were arrested at the instance of the present applicant. The co-accused persons, namely, Vijay Kumar Kushwah and Ashwani Kushwah, had been identified by Nitin Khandelwal/PW-9 as the persons coming out from the house of the deceased on the date of the incident. It is further stated that husband of the deceased/PW-1 had deposed in the Court that the present



applicant was his tenant for the last one and a half year and he had not been seen since 12 to 15 days prior to the incident. It has further come on record in the testimony of the aforesaid witness that rent was also due from the applicant, which he had not paid. The said witness also testified that co-accused Ashwani Kushwah used to visit the present applicant and had also stayed in the rented room for about 4-5 days. It was pointed out by learned APP for the State that Call Detail Records ('CDR') and Customer Application Form of the mobile phones of the present applicant and the co-accused persons, Vijay Kumar Kushwah and Ashwani Kushwah were obtained and as per the CDR, the location of the mobiles of the said co-accused persons was at Bijwasan and they were in touch with each other. It is pointed out that on 20.09.2015, the location of the mobiles of the present applicant and co-accused person Vijay Kumar Kushwah was at Naini, Allahabad and on 29.09.2015 they reached Bijwasan, Delhi. Learned APP for the State further drew the attention of this Court to the following portion of the status report dated 18.09.2023 authored by Inspector Sunil Kumar, SHO PS Kapashera:

“That during investigation the robbed Samsung mobile bearing IMEI No. 357091/05/320593/4 & 357092/05320593/2 was recovered at the instance of accused /petitioner Amit Singh Bhandari, which was being used by deceased Bimla Devi. The CDRs, CAF and location of mobile number 9968286372 of deceased Bimla Devi was obtained. The CAF was found registered in the name of Sh Shiv Ganesh Bhardwaj S/o Kishan Chand Bhardwaj (husband of deceased Bimla Devi) and the activation number 9968286372 was found running in above mentioned robbed mobile bearing same IMEI No. Every mobile phone/handset has its own IMEI number, which run/identified by its first 14 digit only and the last digit of IMEI keeps on changing.”



5. Heard learned counsel for the parties and perused the record.
6. The contention of learned counsel appearing on behalf of the applicant is that the latter has been released on HPC guidelines and without misusing the liberty granted, he surrendered on time and therefore, he should be granted bail in view of his incarceration of a period of more than 5 years. The said contention cannot be the solitary ground for consideration of the present application.
7. The principles governing grant or refusal of bail have been laid down by the Hon'ble Supreme, time and again. In **Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528**, it was held as under:

“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] .)”

8. Although, as per the case of the prosecution itself, the present applicant was not at the spot at the time of the incident, but the other material evidence collected by the Investigating Officer *prima facie* points to the involvement of



the applicant in the present case. The applicant has been identified by husband of the deceased/PW-1 as the person who was his tenant and was missing from the rented premises for 12 to 15 days prior to the date of the incident. The said witness also identified the co-accused of the applicant, namely, Ashwani Kushwah, as the person who visited him and it is pertinent to note that the said co-accused Ashwani Kushwah was identified by Nitin Khandelwal/PW-9 as one of the persons who was coming out of the house on the date of the incident. The location of the mobile phones of the co-accused persons as well as the applicant as per the CDR also points out to the fact that the aforesaid persons were in touch with each other on the date of the incident. The aforesaid fact, coupled with the recovery of stolen mobile phone from the applicant *prima facie* points to his involvement in the present case.

9. In the facts and circumstances of the case, the present bail application is dismissed at this stage and disposed of accordingly.

10. Pending applications, if any, also stand disposed of.

11. Needless to State, nothing stated hereinabove is an opinion on the merits of the case pending trial before the learned Trial Court.

12. A copy of this judgement be sent to the concerned Jail Superintendent, for necessary information and compliance.

13. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

OCTOBER 06, 2023/sn