



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

*Reserved on: 23.11.2023**Pronounced on: 22.12.2023*

+

BAIL APPLN. 2624/2023**PRADEEP**

..... Petitioner

Through: Mr. Ashok Kr. Chhikara, Ms.
Shobha and Mr. Vivek Tiwari,
Advocates.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Amol Sinha, ASC
(Criminal) alongwith Ms.
Chavi, Mr. Kshitiz Garg, Mr.
Arjun Singh Kadian,
Advocates and Inspector
Sanjeev Kumar, PS Dwarka
North.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant application under Section 439 read with Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking grant of regular bail in case FIR bearing no. 152/2017 registered at Police Station Dwarka, North Delhi, for offences punishable under Sections 302/201/34 of Indian Penal Code, 1860 ('IPC').

2. Briefly stated, the facts of the case are that on 25.05.2017, the



police had received information *vide* DD entry no. 10A regarding an unidentified body lying at footpath near Orissa Sadan, Sector 16B, Dwarka. Upon reaching the spot, the police had discovered injury marks on the neck and face of the deceased and blood stains on the jeans worn by the deceased. However, the identity of the body could not be ascertained. Thereafter, the present case was registered under Section 302 of IPC. The police had then sent hue and cry notices to the nearby police stations as well as to the neighbouring states. On 26.05.2017, the CRO Branch of the police had identified the deceased as one Marshal, son of Sh. Raj Singh, aged about 22 years, who had been reported as missing on 25.05.2017 at Police Station Ranhola, Delhi. Thereafter, one Arjun had identified the deceased as his elder brother, and he had expressed his suspicion about the involvement of present accused/applicant in causing death of the deceased, since the brother of deceased i.e. Arjun had good relations with Pooja i.e. the wife of present accused/applicant. During the course of investigation, the police had obtained the Call Detail Records of the applicant and it had been revealed that the mobile location of the applicant was in the area of P.S. Dwarka as well as in the area where the body of the deceased had been found. In the meanwhile, the post-mortem report of the deceased had revealed that there were several injuries on his neck, eyes and lips, and the injury on the neck i.e. *“transverse ligature mark 10 cm in the form of pressure was present in the front and both sides of neck. In the midline ligature mark was present 8 cm below the chip and 10 cm above the sterna notch and the width was 2.5 cm. On the right side it*



was present 11 cm below the mastoid and the width was 2.4 cm. On the left side it was present 12 cm below the mastoid and the width was 2.5 cm” was opined as the cause of death by the doctors concerned. As per prosecution, the applicant had disclosed during investigation that on 24.05.2017, he and his brother Deepak had gone to Transport Authority, Sector-10, Dwarka to enquire about their license and that they had been drinking since the morning. He had further disclosed that in the evening, he alongwith his brother Deepak and his friend Ravi had picked up the deceased from near his residence and while drinking and roaming in the car, they had continued to slap and beat the deceased. On seeing this behaviour, his friend Ravi had got down from the car near Najafgarh road. However, the applicant and his brother/co-accused had then taken the deceased to Gurgaon and on their way from Gurgaon to Delhi, they had killed the deceased by using a belt and had thrown him somewhere near Sector-16, Dwarka, Delhi.

3. On 27.05.2017, the applicant herein was arrested in the present case, and he had identified the place where the accused had thrown the body of the deceased. During the course of further investigation, the police had seized the clothes which the applicant had worn at the time of committing murder of the deceased, from his residence, however, the clothes were found to have been washed by his wife. The applicant had then got recovered a black belt measuring 19 cm from his residence and had disclosed that he and his brother had used the same belt in commission of the offence. The FSL report had opined that the injuries caused on the neck of the deceased could



have been caused by the belt recovered in this case. The co-accused i.e. the applicant's brother Deepak was arrested during further investigation, and at his instance, the Swift car bearing no. DL9CAU1246 was recovered from Nangloi Railway Station, J.J. Colony. Upon inspection, the police had found blood stains inside the car and the FSL team had then lifted samples from the car for analysis. Further during investigation, it was found that the applicant Pradeep was the registered owner of the car in question. It was also discovered that on 24.05.2017 at 10:43 PM, a challan had been issued by the traffic police officials of Gurgaon Police when both the accused persons were travelling in the car in question. The concerned traffic officials had also informed the police that the deceased was sitting on the rear seat of the car in question on the said day.

4. After concluding investigation, the chargesheet was filed under Sections 302/201/34 of IPC against the accused Pradeep and Deepak. FSL reports were thereafter filed by way of supplementary chargesheet. Charges were framed against the accused persons by the learned Trial Court on 11.01.2018.

5. Learned counsel for the present accused/applicant argues that the present case is a case of circumstantial evidence and there is no eye witness to the commission of offence in question. It is argued that the applicant has been falsely implicated in the present case and the motive, as alleged by the prosecution, is without any basis because if the applicant had to take revenge from Arjun who was having affair with the applicant's wife, the applicant would have killed Arjun and not his brother Marshal i.e. deceased in the present case. It is



submitted that the co-accused Deepak has already been enlarged on bail vide order dated 13.05.2022, and that the role of present applicant is similar to that of co-accused Deepak. It is also argued that all the six public witnesses have already been examined and that key witnesses i.e PW-1, 2 and 3 have not supported the case of prosecution. It is also contended that the applicant was earlier released on interim bail as per HPC guidelines and he had surrendered in time. It is also stated that since the applicant has remained in judicial custody for a period of about three years and nine months, he be released on regular bail.

6. Learned ASC for the State, on the other hand, opposes the present bail application and argues that the FSL report in respect of the belt, which was used to strangle the deceased, has supported the prosecution's case. It is also argued that the belt used in commission of the crime had been recovered at the instance of the present accused Pradeep. It is also stated that the blood samples lifted from the car used by the accused persons, which is registered in the name of applicant, had matched with the DNA of the deceased. It is thus, argued that the documentary evidence distinguishes the case of the applicant herein from that of co-accused Deepak. It is also stated that only 16 witnesses have been examined, and several material witnesses remain to be examined. Therefore, it is prayed that the present bail application be dismissed.

7. This Court has heard arguments addressed by learned counsel for the accused/applicant as well as by the learned ASC for the State, and has perused the material placed on record.



8. In the present case, this Court is of the opinion that the applicant herein cannot claim bail on the ground of parity since the role of the applicant and the evidence against him is different from that of the co-accused Deepak who has been granted bail. The belt which, as per the case of prosecution, had been used for strangulation of the deceased, was recovered at the instance of the present accused/applicant, from his room. Thereafter, forensic opinion was also taken from DDU Hospital and the forensic specialist had opined that it was possible to cause the injuries, as caused to the deceased on his neck, with the belt in question, which were sufficient in ordinary course to cause death.

9. The swift car, which was allegedly used by the accused persons for committing the offence, was recovered from Nangloi Railway Station and as per records, the car was registered in the name of present accused/applicant. The police had also found blood stains on several portions of the car, and as per FSL report dated 22.03.2018, the samples of blood which had been lifted from the car in question and from the belt which had been recovered at the instance of present applicant, match with the blood samples of the deceased.

10. It was also discovered during the investigation that on the night of incident, a challan had been issued qua the Swift car used by the accused persons and upon conducting further investigation, it was revealed that ASI Richpal (PW-5) and Constable Kapil (PW-6) of Traffic Police, Haryana had issued challan on the night of 24.05.2017 as they had caught the applicant driving the car in question in an



intoxicated state. PW-5 and 6 have supported the case of prosecution before the learned Trial Court and have deposed that on the 24.05.2017, when they had stopped the car in question, the applicant Pradeep was driving the car, co-accused Deepak was sitting beside him and the deceased Marshal was sitting on the rear seat of the car and was having some injury marks on his face. Both the witnesses had identified the applicant herein before the learned Trial Court.

11. It is also important to note that the CDR analysis of the present applicant had revealed that on the relevant dates, he was present in the area of P.S. Dwarka and in the area where the body of the deceased was found. PW-4 has also supported the case of prosecution on material aspects and has deposed before the learned Trial Court that the applicant herein had extended threats to him and his brother i.e. deceased since it was because of them that the married life of applicant had got disturbed.

12. The present accused is facing trial for offence of murder and several material witnesses are yet to be examined, while some public witnesses i.e. PW-4, 5 and 6 have supported the prosecution case on material aspects. The FSL report in this case also supports the case of prosecution and is against the present accused/applicant.

13. Therefore, considering the aforesaid facts and circumstances of the case and the maximum punishment which can be awarded to the accused in case he is convicted in the present case, this Court, *at this stage*, is not inclined to grant regular bail to the present accused.

14. However, the learned Trial Court is requested to ensure that the trial is concluded expeditiously since the accused is in judicial



custody for about three years and nine months and the incident in question pertains to May, 2017. In these circumstances, it is directed that the trial in this case be concluded preferably within nine months from the receipt of copy of this order.

15. Accordingly, the present application stands disposed of in view of above terms.

16. A copy of this judgment be forwarded to the learned Trial Court for information in compliance.

17. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 22, 2023/ns