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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 29/2024

JAVED ALAM @ RAJA

..... Applicant

Through: Mr. Sarthak Tomar, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Utkarsh, APP for the
State with Mr. Shalabh
Aggarwal, Adv. with Insp.
Madhurendra Kumar, PS
Bara Hindu Rao.

Mr. Vineet, Adv. for
complainant

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

08.04.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 (**CrPC**), seeking grant of bail in FIR No. 247/2022 dated 05.09.2022, registered at Police Station Bara Hindu Rao, for offence under Section 365 of the Indian Penal Code, 1860 (**IPC**). Chargesheet was filed under Sections 302/201/34 of the IPC.

2. The FIR was registered on the basis of the missing report of one Mohd. Haseeb on 04.09.2022. It was stated that Mohd. Haseeb had gone riding his two wheeler vehicle (Honda Ntorq Scooty) to meet one Naushad on 03.09.2022 and had not come back.

3. The suspect Naushad and his one son were interrogated and his son, who is a juvenile, broke down and revealed that on 03.09.2022, Mohd. Haseeb / victim had come to their house at 3:30 p.m. He revealed that his father Naushad had an argument with the victim, which infuriated his father Naushad who then asked him to bring the gun. The son confessed that on the instructions of his father, he brought the licensed gun and killed

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the victim and he along with his father thereafter disposed of the dead body of the victim in a canal near Dasna Masuri.

4. During the course of investigation, CCTV footage of the vicinity was checked and the applicant was allegedly seen coming out from Naushad's lane and removing the scooty of Mohd. Haseeb, in the evening of 03.09.2022.

5. The learned counsel for the applicant submits that the applicant is related to the accused Naushad and was working with him at the relevant time as an employee.

6. He submits that the applicant, on instructions of his employer, had removed the two wheeler vehicle. He submits that there is no allegation that the applicant is involved in inflicting any fatal injury or blow or gun shot injury to the victim.

7. He lastly submits that the applicant has been in custody since 06.09.2022. He submits that admittedly, the trial is to take considerable period of time and therefore, the applicant ought to be released on bail.

8. The learned counsel for the complainant opposes the grant of bail to the applicant. He submits that the applicant is also involved in committing the murder of the victim.

9. He submits that all the accused persons were present in the room when the gun shot injury was caused to the victim.

10. He submits that all the accused persons are related to each other and had common intention to commit the crime.

11. The learned Additional Public Prosecutor for the State submits that the maximum punishment in the present case is imprisonment for life and no order granting bail ought to be passed in the present case.

12. I have heard the learned counsel for the parties.

13. The case of the prosecution, at this stage, is based on

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alleged disclosure and confession of the accused Syed Areeb Hasan, who, on being interrogated, admitted that he had killed the victim on instructions from his father.

14. It is relevant to note that the accused Syed Areeb Hasan had not named the applicant to be a person complicit in the commission of the crime. The applicant has been arrested solely for the reason that he was seen in the CCTV footage removing the two wheeler vehicle of the deceased.

15. There is no eye-witness in the present case and the case is solely based on circumstantial evidence and the statements given by the accused persons.

16. The mere presence of the applicant in the house of the accused persons or the CCTV footage showing that the applicant was removing the two wheeler vehicle of the victim, at this stage, indicates the allegation of disappearance of evidence of the offence at best.

17. The accused persons who have allegedly confessed to the crime have not named the applicant being aware of the crime or having common intention.

18. The applicant has been in incarceration since 06.09.2022. The investigation is already complete.

19. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time.

20. The applicant has made out a *prima facie* case for grant of bail. The custody of the applicant is no longer required in the opinion of this Court.

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21. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. He shall appear before the learned Trial Court as and when directed;
- c. He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- d. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

22. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

23. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

24. The bail application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

APRIL 8, 2024 / 'KDK'