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

+ **BAIL APPLN. 136/2024**

KUVESH ALIAS VICKYPetitioner
Through: Counsel (appearance not given).

versus

THE STATE (NCT OF DELHI)Respondent
Through: Ms. Shubhi Gupta, APP for the State
with Insp. Net Ram, P.S.:
Jahangirpuri.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
26.07.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 283/2014 dated 10.04.2014 registered under section 302 of the Indian Penal Code, 1860 ('IPC') at P.S.: Jahangir Puri, Delhi. Consequent upon completion of investigation, *vide* chargesheet dated 01.07.2014, sections 34 and 120B IPC have been added to the case.

2. Notice on this petition was issued on 12.01.2024. Status Report dated 25.11.2023 had been filed earlier. Another status report dated 26.07.2024 has been handed-up in court today and is taken on record.
3. Nominal Roll dated 29.01.2024 has also been received from the Jail Superintendent.



4. The nominal roll records, that as of 29.01.2024, the petitioner had undergone custody of more than 09 years and 09 months as an undertrial.
5. Learned counsel for the petitioner argues, that other things apart, the maximum punishment that the petitioner faces for the offence under section 302 IPC is 'life imprisonment'; and a reading of section 57 IPC would show that for calculating fractions of terms of punishment, imprisonment for life is to be reckoned as equivalent to imprisonment for 20 years.
6. Counsel accordingly argues, that as of date, the petitioner has already undergone more than 10 years of custody as an undertrial; and is therefore entitled to the benefit of section 436-A Cr.P.C., for being released from custody. Insofar as the position that the offence under section 302 I.P.C. is also punishable with death, counsel argues that the capital punishment is awarded only in the rarest of rare cases and for purposes of considering the benefit of section 436A Cr.P.C., the court may not proceed on the basis that the present case falls in that category.
7. That apart, counsel argues that trial in the matter is still not complete and deposition of the I.O. is yet to be recorded.
8. On the other hand, Ms. Shubhi Gupta, learned APP appearing for the State submits, that as has been detailed in their status reports, in conspiracy with other co-accused persons, the petitioner has caused the death of one Sanjay, in which his role was of wielding a *danda*, which caused injury Nos. 4 and 5 *i.e.*, dislocation of the left hand and an injury on the knee of the deceased as per Postmortem Report dated 11.04.2014.



9. Ms. Gupta further submits, that the cause of death has been opined to be the combined effect of multiple injuries inflicted on the body of deceased. She submits, that in any case, the petitioner is also liable for the actions of the other co-accused persons since they have also been charged with section 34 IPC.
10. Ms. Gupta further states, on instructions, that the SCRB report also reflects the petitioner's involvement in other criminal offences.
11. Upon a conspectus of the facts and circumstances of the case, and having considered the submission made by learned counsel appearing for the petitioner and the learned APP, what weighs with the court at this stage are the following considerations :
 - 11.1. As per the nominal roll received from the jail, as of 29.01.2024, the petitioner had already undergone custody of more than 09 years and 09 months as an undertrial.
 - 11.2. Though the nominal roll records that the petitioner's overall jail conduct is 'unsatisfactory', it is seen that the petitioner has been awarded punishments from time-to-time, by way of which he has already atoned for his prison offences. Besides, the nominal roll also records that the petitioner's jail conduct over the last 01 year has been 'satisfactory'.
 - 11.3. Though the learned APP submits that the petitioner is also involved in other criminal cases, the nominal roll does not list any such case; and besides, the decision on the petitioner's bail in the present case would not override or decide the status of custody that the petitioner may be undergoing in any other case.



- 11.4. Also, regardless of the petitioner's liability under sections 34 and 120-B IPC, the allegations against the petitioner as read with the postmortem report show that he is accused of having wielded a *danda* which resulted in the dislocation of the left hand and injury on the knee of the deceased.
- 11.5. It may also be observed that *vide* order dated 06.10.2021 made in SLP (CrI.) No. 529/2021 titled ***Sonadhar vs. State of Chhattisgarh***, the Supreme Court has *inter-alia* directed the State Legal Services Authorities that even in cases where a person is convicted and sentenced to life imprisonment, they may be released from custody after they have undergone 08 years of actual imprisonment, subject to the person agreeing to not press their appeal against conviction. Since even a convict serving life imprisonment has been held to be entitled to be released from custody once they have undergone 08 years of actual imprisonment in terms of *Sonadhar*, that principle would *a-fortiori* apply to an undertrial, who has already suffered custody of more than half of the imprisonment that he can be awarded.
- 11.6. Insofar as the question that for the offence under section 302 IPC the petitioner may possibly face the capital punishment, suffice it to say that though section 436A Cr.P.C., in its terms, does not apply to offences that attract the death penalty, in the opinion of this court, that would not be sufficient to deprive the petitioner of his right to life and personal liberty as guaranteed under Article 21 of the Constitution, which constitutional right has been held



to have overriding effect, notwithstanding any other requirements or conditions in the extant law.¹ Long periods of incarceration have deleterious effects on the well-being of a prisoner and courts have to be sensitive towards these aspects while deciding cases of bail, especially of undertrials.

12. As a sequitur to the above, this court is persuaded to allow the present petition, thereby admitting the petitioner **Kuvesh alias Vicky s/o Naresh**, to *regular bail* pending the completion of trial, subject to the following terms and conditions:

- 12.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 12.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 12.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 12.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge

¹ *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*, 2024 INSC 534 at Para 32



in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

12.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O.

13. Nothing in this order shall be construed as an expression of opinion on the merits of the pending trial.

14. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.

15. The petition stands disposed-of.

16. Other pending applications, if any, also disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 26, 2024

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