



2024: DHC: 4365



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 28.05.2024

+ **BAIL APPLN. 286/2024**

HEMANT JAIN

.....Applicant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Applicant : Ms. Dolly Sharma, Adv.

For the Respondent : Mr. Utkarsh, APP for the State with Mr.
Divyank Rana, Adv.
Inspector Suman Kumar, PS- DBG Road

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present bail application is filed under Section 439 of the Code of Criminal Procedure, 1973 (**CrPC**) read with Section 482 of the CrPC, seeking regular bail in FIR No. 34/2019 dated 25.01.2019, registered at Police Station D.B.G. Road, for offence under Section 302 of the Indian Penal Code, 1860 (**IPC**).

2. The relevant facts for the adjudication of the present application are as follows :

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2.1 On 25.01.2019, an information was received *vide* DD No. 14 - A that a dead body was found, behind a CNG pump near Arya Samaj Mandir.

2.2 It is alleged that the call was entrusted to SI Lalit, who along with other police officials, reached the place of the alleged incident where the dead body of a lady aged about 29-30 years was found lying near the CPWD wall.

2.3 During enquiry, the deceased was identified as Roshna@ Rekha by her uncle, at the place of the alleged incident. He alleged that she had been missing from her home since the night of 24.01.2019.

2.4 The said lady, namely, Roshna@Rekha, was declared brought dead *vide* MLC No-73791/19 dated 25.01.2019. Accordingly, the present FIR was registered on the basis of the said information.

2.5 During the course of the investigation, the post-mortem of the deceased Roshna@Rekha was conducted *vide* post-mortem No-34/19 dated 25.01.2019 at LHMC Delhi. It is alleged that as per the post-mortem report, the cause of death is "*Asphyxia as a result of homicidal manual strangulation and traumatic asphyxia*".

2.6 During the course of investigation, the mother of the deceased (PW-6) stated that on 24.01.2019, her neighbour, that is, accused Urmila, had called the deceased to her home to clear the accounts of money, which accused Urmila had borrowed from the deceased.

2.7 It is alleged that the CDR of the mobile number of the deceased was obtained and its analysis revealed that the last call on the mobile number was from the mobile number of accused Urmila. It is alleged



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that subsequently, the accused Urmila was apprehended on 26.01.2019.

2.8 It is alleged that accused Urmila had taken a loan of ₹14,00,000/- from the deceased on interest and was unable to repay the same. It is alleged that the deceased was mounting pressure on her to repay the loan. It is alleged that the deceased was threatening to kill the son of the accused Urmila and usurp her flat. It is alleged that on finding no way out of the predicament, accused Urmila and her sons – Sumit and minor son (CCL 'S') discussed the matter with the applicant who was their friend.

2.9 It is alleged that the accused persons hatched a conspiracy to kill the deceased at accused – Urmila's house.

2.10 It is alleged that as per their plan, on 24.01.2019, accused Urmila called the deceased to her home where CCL 'S' and the applicant were already present. It is alleged that when the deceased reached there, they all murdered the deceased by strangulating her. It is alleged that the applicant and Shubham (CCL) disposed of the body of the deceased in a deserted place on the applicant's scooter.

2.11 It is alleged that on the disclosure of accused Urmila, co-accused CCL 'S', co-accused Sumit, and the applicant were all arrested on 25.01.2019.

2.12 The applicant had preferred bail application before the learned Sessions Court, which was dismissed, by order dated 17.10.2023. Hence, the present application.



3. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. She submitted that the applicant is not named in the FIR and was arrested only on the disclosure statement of accused – Urmila. She submitted that the applicant has been in incarceration since 25.01.2019. The investigation in the present case is complete and the charge sheet has also been filed, and no purpose would be served by keeping the applicant in further custody.

4. She submitted that the evidence in the present case is only circumstantial in nature. There is no cogent evidence against the applicant nor any circumstances forming a complete chain that proves that the alleged offence was committed by the applicant.

5. She submitted that the complainant and the mother of the deceased, has deposed nothing incriminating against the applicant to connect him with the alleged offence and she has not supported the case of the prosecution in this regard.

6. She submitted that the amount alleged to be given by co-accused to the applicant to commit the alleged offence was not recovered from the applicant. There is nothing on record to prove the alleged transaction to connect the applicant with the alleged offence.

7. She submitted that the gold ear tops of the deceased alleged to be taken by the applicant at the time of the alleged incident, were not recovered from the applicant.

8. She submitted that as per the prosecution version, the alleged offence was committed on the 4th floor of a residential place where



houses are built in close vicinity and the area is densely populated. Further, as per prosecution, the deceased was screaming at the time of the alleged offence, but no one in the neighbourhood heard her screaming or saw the applicant at the alleged place of incident or at the relevant time.

9. She submitted that as per prosecution, several persons were gathered on several occasions, however, the police have failed to join any public persons as witnesses, which creates doubt about the fairness of the investigation and shows that the applicant has been falsely implicated.

10. She submitted that there is no eyewitness to the alleged offence who has seen the applicant committing the alleged offence or carrying the dead body of the deceased on a scooty to dump it. She submits that as per the prosecution, nothing was found in the CCTV footage, which shows that the applicant has been falsely implicated.

11. She submitted that the applicant was released on interim bail on account of HPC guidelines by the learned Trial Court *vide* order dated 08.06.2021. He submitted that the applicant had surrendered on time and had never misused the liberty.

12. She submitted that the applicant has clean antecedents. She submitted that the custody period undergone by the applicant is around 5 years and the trial is at the stage of prosecution evidence.

13. *Per contra*, the Additional Public Prosecutor for the State vehemently opposed the bail application. He submitted that the allegations against the applicant are serious in nature.



14. He submitted that the present case is based on the circumstantial evidence and recovery of the scooter used for the transportation of the body of the deceased was recovered at the instance of the applicant.

15. He submitted that the clothes, the applicant was wearing on the day of the alleged incident were found containing blood stains which shows that he actively participated in the commission of the crime.

ANALYSIS

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

17. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

18. However, prolonged incarceration as an undertrial militates against the right to life and personal liberty guaranteed under Article 21 of the Constitution, and the same is also a factor which has to be kept in mind at the time of deciding the question of grant or refusal of bail.

19. At this stage, it cannot be denied that there is no direct evidence against the applicant and he has been implicated solely on the basis of the circumstances allegedly leading to the death of the victim. It is pertinent to note there is no eye witness to the commission of the



alleged incident and the applicant was arrested on the disclosure statement of accused Urmila.

20. It is settled law that when the case is based solely on circumstantial evidence, the chain of circumstances must be so complete that it leaves no reasonable ground for any other conclusion except for the hypothesis of the guilt of the accused person.

21. Insofar as the contentions of the learned counsel for the applicant to the effect that the blood stained clothes have been planted by the prosecution ; the scooty used to transport the body of the deceased was not recovered at the behest of the applicant ; and the gold ear tops of the deceased alleged to be taken by the applicant at the time of the alleged incident were not recovered from the applicant, are concerned, it is for the learned Trial Court to consider the probative and evidentiary value of the same during the stage of trial.

22. It is contended that there is no witness who supports the allegations that the blood-stained clothes worn during the alleged incident belonged to the applicant. Further, it is contended that there is no witness to support the allegation that the body of the deceased was transported on the scooty, which was allegedly recovered at the instance of the applicant.

23. The allegations along with the defences in this regard would be considered during the course of the trial.

24. Admittedly, the case is at the stage of prosecution evidence and all the material witnesses have been examined. There is no possibility of the applicant influencing the material witnesses in the event of him



being enlarged on bail. Further, the trial is likely to take a considerable period of time.

25. A perusal of the nominal roll dated 29.02.2024 reflects that the applicant has been in custody for 02 years, 11 months and 14 days. No useful purpose would be served by keeping the applicant in further custody.

26. The applicant is in custody since 25.01.2019. The custody may itself result in the denial of his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in near future.

27. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeeb : AIR 2021 SC 712*** held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge them on bail.

28. It is not in doubt that the applicant while being on interim bail did not misuse the liberty in any manner and duly surrendered upon expiry of the interim bail. There is no complaint in relation to him attempting to tamper with the evidence, influence the witnesses or getting involved in the commission of any similar offence.

29. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.



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30. Considering the aforesaid discussion, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- 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. The applicant 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. The applicant shall under no circumstance leave the boundaries of the country without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

31. 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.

32. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not



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influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

33. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 28, 2024