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

+ **BAIL APPLN. 358/2024**

SAURABH @ SANAJY

.....Petitioner

Through: Ms. Swati Rathi, Ms. Chetishtha
Malik, Mr. Prem Sood, Mr. Luv
Sharma and Mr. Suresh, Advs.

versus

THE STATE GOVT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State
with Insp. Rajnikant, PS: Bawana.
Ms. Sakshi Sachdeva, Advocate with
Ms. Ritika Rajput, Advocate for
complainant.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
12.11.2024

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1. This petition has been filed seeking regular bail in FIR No.482/2018 registered at P.S. Bawana, u/s 365/302/201/120-B/34/174-A IPC. Petitioner was arrested on 26th October 2018. As per the Nominal Roll, there are no previous involvements and the petitioner has spent about 6 years in custody. An interim bail was granted in 2023, for a period of about 3 weeks, and there is no allegation that it has been misused in any manner. Material witnesses have been examined.
2. The case of the prosecution is that missing report was registered on 24th October, 2018 at P.S. Bawana. The complainant came to know that the relatives of the girl (Isha) had kidnapped complainant's nephew Sahil.
3. On this basis, the investigation ensued. Isha was examined, who stated



that she was friends with Sahil. Around midnight, she met Sahil near her house, and they drove around the area, in a white Santro Car, brought by Sahil. At around 03:00 AM, she came back. When she was entering her house, Sahil was about to leave in his car then her father, cousins Rakesh and Manish and her Tai (aunt) came out and they caught hold of Sahil, and started beating him. Later, she stated, that her father and cousins, including the petitioner, took Sahil, somewhere in his Santro Car, after tying his hands.

4. The CCTV footage of the camera installed outside the house was procured which apparently, as per the IO, showed that 3 persons at around 03:00 AM, had taken Sahil along with them.

5. Meanwhile, the dead body of the deceased was recovered at the instance of accused Rakesh. Subsequently, all the accused Vijender Singh, Saurabh, the petitioner, Rakesh and Nitesh were arrested. The other co-accused Manish, Babli and Lokesh were absconding. Subsequently, Manish was arrested in another case and was produced before the Court.

6. As per the investigation and disclosure of the accused, Sahil was taken to Nitesh's house at Village Silana where Nitesh prepared a video footage from mobile phone to create an *alibi*. Nitesh, Rakesh and Lokesh took Sahil to Gohad canal and killed Sahil by strangulating him and dropped the body in the canal, later, the car itself was burned.

7. Counsel for the petitioner states that the petitioner had never visited the place of incident and there is no accusation against the petitioner, that he was involved in the killing of the deceased. Moreover, no evidence has been placed on record, which would show the involvement of the petitioner; there was no CCTV footage which would implicate the petitioner.

8. There is some issue related to the CCTV footage and recording of an



audio conversation and a video conversation, which was part of the investigation. Details of this are placed by the State in a *Brief synopsis of FSL Report & Results*.

9. CCTV footage of Isha's house had originally been seized and examined by the IO. However, when the CCTV footage was played in the Trial Court, the same could not be played. The CD containing the said footage was also sent to the FSL but could not be run.

10. As regards the telephone conversation between Isha/PW-1 and Pulkit/PW-5, where purportedly, Isha mentioned, the involvement of the accused, in taking away, Sahil/deceased, the CDR was played in the Court, but could not be run due to some technical error. This was sent to the FSL but the data could not be retrieved.

11. The video recording, which was purportedly made by one Nitesh, to formulate an *alibi*, could also not be played in the Trial Court; the CD was sent to the FSL but data could not be retrieved.

12. Counsel for the complainant has raised a serious concern, regarding the unavailability of the data, which originally formed a part of the investigation. Counsel for complainant states that she shall take steps in accordance with law, before the Trial Court, in this regard, so that the data originally recorded can be retrieved and can be put to the witnesses, in particular, PW-5. Needless to state, the complainant is always at liberty to do so.

13. Counsel for the petitioner also points out that PW-1/Isha has completely turned hostile to the case of the prosecution and has not identified the petitioner during her testimony recorded before the Trial Court. In her statement, recorded under Section 164 Cr.P.C., PW-1/Isha, stated that *her family members should be acquitted in this matter*.



14. Counsel for the complainant points out that Isha had sent a complaint to the police station on 8th February 2019, that Isha is ready to assist the investigation, but she is residing at her maternal-uncle's place and therefore will join it later.

15. From the conspectus of the facts and circumstances stated above, considering that the petitioner has been in custody for more than 6 years, has no previous involvements, has been released on interim bail in 2023, there is no allegation he has attempted to threaten or influence the witnesses, the Court is of the view that petitioner be granted bail on the following conditions:

16. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned



which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.

- vi. Petitioner will mark presence physically before the concerned I.O. every Tuesday at 4 p.m., and will be not kept waiting for more than an hour.
- vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

17. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

18. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

19. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

20. 'Dasti'

21. Order be uploaded on the website of this Court.

ANISH DAYAL, J

NOVEMBER 12, 2024/RK

[Click here to check corrigendum, if any](#)