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

+ **BAIL APPLN. 418/2023**

ISHTIAQUE ALI

..... Petitioner

Through: Mr. Siddharth Aggarwal, Senior Advocate with Mr. Nipun Katyal, Ms. Kismat Chauhan, Mr. Harsh Yadav and Ms. Anam Siddiqui, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State with Insp. Anand Prakash & SI Naveen, P.S. Palam.
Mr. Vijay Kasana, Mr. Dalip Garg, Mr. Kshitij Chhabra and Mr. Chirag Verma, Advocates for complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

29.02.2024

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1. This is the second application under Section 439 of the CrPC seeking regular bail in case FIR No. 97/2018 under Sections 364A/302/201 of the IPC registered at PS Palam Village.
2. The first application filed on behalf of the applicant seeking regular bail, i.e., BAIL APPLN. 1786/2022 was dismissed as withdrawn *vide* order dated 18.07.2022 passed by a coordinate bench of this Court.
3. The case of the prosecution, as per the status report authored by SHO, PS Palam Village, is as under:

“Most respectfully, it is submitted that the facts of the case are that on 23/03/18 the complainant Dinesh Chandra S/o Late Sh. Krishan Dutt R/o A-317, Gali no. 1, Station Road, Sadh Nagar,



Palam New Delhi, came to the police station and lodged a complaint, which is as follows *"I live at the above mentioned address with my family and works with New India Assurance Company Limited whose office is located at Kasturba Gandhi Marg, Connaught Place, Delhi. My son Ayush Nautiyal, age 21, who is studying in Delhi University's Ram Lal Anand College, Dhaula Kuan, in 3rd year B. Com., on 22-03-18, at around 11 am, Ayush left the house by saying that today he has a fest in his college and he would be late from but Ayush did not come back home till evening. After that at around 07:54 pm a message came on my mobile phone from Ayush's mobile phone number to check your whatsapp. After that when I opened my whats app and saw that Whats app messages were coming on my phone from my son Ayush's phone number, in which one of the messages had Ayush's photo and in the photo Bandages have been tied on the arms, legs and eyes and in another message I was directed to arrange Rs. 50 lakh till tomorrow and not to inform the police or any relative. After receiving the message, we have come to the police station. I suspected that someone has kidnapped my Son Ayush and demanded ransom, please taken appropriate legal action."* Hence FIR No. 97/18, U/s 364A IPC was registered at P.S. Palam Village, Delhi.

That on 24/03/18, a whats app message was received on the phone of complainant from the phone of victim i.e. "paisa ka injram ho gaya kiya", the complainant replied that he could not arranged 50 lakh rupees, he could arrange only 10 lakh rupees. But the accused told him to arrange 50 Lakh rupees.

That on 25/03/18 IO/SI Sandeep Kumar along with HC Sanjeev and brother-in-law of victim namely Parvesh checked the CCTV footage of dated 21/03/18 of Mc Donald situated at Sector-14 Dwarka Delhi and found that at 3:41 PM, victim along with a guy wearing blue T shirt and jeans having beard entered at Mc Donald restaurant and placed an order at counter and after some time both of them departed from there. SI Sandeep took the CCTV footage of Mc Donald of dated 21/03/18 in a CD. The photograph of suspect who was seen along with the victim was developed.

That on 27/03/18, at 07:39 pm a whatsapp message was received on the phone of complainant from the phone of victim. In the message accused asked the complainant to keep the amount of ransom in garbage cane near Anupam restaurant Munirka, Vasant Vihar, Delhi at 10.00 pm. The staff of PS was deployed near Anupam restaurant and a bag was kept in garbage near Anupam



restaurant but no one came to take the bag till 01:00 am.

That on 28/03/18, in the evening information was received that one male dead body was found in Nala near Metro view apartment, Sector-13, Dwarka, Delhi and so staff of PS Palam Village and complainant Dinesh Chandra reached at the spot and found one male dead body. The dead body was identified by the complainant Dinesh Chandra as of his son and the articles i.e. spectacles which was lying near dead body was also identified by the complainant.

That password of e-mail ID of the victim was cracked and photographs as well as messages were analyzed. During investigation, face book Id of suspect was obtained from the emails of the victim, in which suspect had mentioned that he studied in Pearl Academy of Fashion designing. The pearl academy was searched in Google and one Pearl academy was found in at A-21/13, Naraiana Industrial Ares phase-2. New Delhi.

That on 29/03/18, post mortem of deceased Ayush was conducted at DDU Hospital vide PM No. 512/18 and after post mortem dead body was handed over to Sh. Dinesh Chandra (father of deceased). After that ASI Shyam Sunder was sent to Pearl Academy to verify the suspect. The suspect was duly identified as ishtiaque Ali S/o Sheikh Mumtaz Ali. His documentary record was obtained from the above said Institute.

That on 29/03/2018, staff of PS Palam Village reached at Mohan Garden, Uttam Nagar, Delhi. In that area they found a boy who resembles with the photograph of suspect who was overpowered and his name was revealed as Ishtiaque Ali S/o Sheikh Mumtaz Ali R/o L-135 Ext 2 Mohan Garden, Uttam Nagar Delhi. On detailed interrogation it came into notice that accused Ishtiaque Ali used Tinder.com site and he had conversation with deceased Ayush at that site before 20 days. Thereafter on 21/03/18 they met at Sec-14 Dwarka in Mc Donalds restaurant. On 22/03/18, on the call of accused Ishtiaque Ali, deceased Ayush reached at C Block, Rama Park, Delhi. They stayed at the ground floor of said house and talked about the business of fashion designing but meanwhile the conversation turned into heated argument so Istiaque Ali became furious and planned to kill Ayush and also planned to take ransom from the father of Ayush. So Ishtiaque Ali picked a big hammer from the kitchen and hit on head & chest of Ayush. After that Ishtiaque Ali stabbed him in the neck with knife. On 23/03/18 in the early morning he with the help of **CCL** put the dead body on the



back seat of his Alto car and dumped in drain behind Metro View Apartment, See-13 Dwarka Delhi. Accused Ishtiaque Ali burnt the laptop, books, ID of deceased at Najafgarh Drain and Hammer and Knife was thrown in Najafgarh Drain.

That during investigation, Alto car no. DL2CAL 2553 which was used to dump the dead body of deceased Ayush recovered. The car was inspected and it was found that there were blood stain on the back seat and back door so the car was taken in police possession through seizure memo.

That during investigation, accused Ishtiaque Ali pointed out H.N. C-115, Rama Park, Delhi. On interrogation, it was revealed that key of the house is in the custody of Sh. Prateek S/o Sh. Jagbir R/o MS Block W-27, Mohan Garden, Uttam Nagar, New Delhi. So, Prateek was called at the spot and he opened the lock of the house. Accused Ishiaque All pointed out to the room in which he took the AyuS, and committed murder of Ayush in the room.

That during investigation accused Ishtiaque took out a blue colour samsung mobile, IMEI No 357169082116437 and 357170082116435 from the Almiraha at 2nd floor of L-135, Ext 2, Mohan Garden, Uttam Nagar, Delhi and produced to the IO. Accused Ishtiaque Ali disclosed that this is Ayush's mobile phone and he sent the messages of ransom from this mobile phone. The phone was taken in police possession through seizure memo.

That during investigation, IO along with staff reached in the area of Mohan Garden, Uttam Nagar, Delhi for the search of co accused and there accused Ishtiaque Ali pointed out a boy who was standing at the gate of a house and told that he is ***** who helped him to keep the dead body in his car and dumped the dead body in drain, so ***** was overpowered and interrogated. During investigation father of ***** namely ***** told that ***** was 17 years of age at the time of offence. So, the apprehension documents of CCL ***** CCL ***** S/o ***** R/o ***** was prepared. After that CCL ***** was produced before JJB and he was sent to Sewa Kutir observation home.”

(Details pertaining to the CCL have been redacted to protect the identity)

4. Learned Senior Counsel for the applicant submits that the case of the prosecution, *qua* the latter is based on circumstantial evidence. It is pointed out that the prosecution has not been able to establish any motive on part of



the applicant. It is further submitted that the CCTV footage relied upon by the prosecution also does not complete the chain of circumstances pointing towards the guilt of the applicant.

5. Learned Senior Counsel for the applicant submits that the latter was arrested on 29.03.2018 and has been in judicial custody since 01.04.2018. It is submitted that the chargesheet as well as three supplementary chargesheets have been filed. The trial is underway and out of the 37 prosecution witnesses cited by the prosecution, only 02 have been partly examined so far. Learned Senior Counsel further submits that the applicant was released on interim bail on the basis of the HPC guidelines and thereafter, the applicant has been released on interim bail on various other occasions as well. It is submitted that the applicant surrendered each time, upon expiry of the period of interim bail, without misusing the liberty granted to him.

6. *Per contra*, learned APP for the State, on instructions of the Investigating Officer, submits that the incident is dated 22.03.2018. It is submitted that the prosecution is relying upon two CCTV footages dated 21.03.2018, i.e., one day prior to the day the deceased went missing and one dated 22.03.2018, i.e., the day when he went missing. It is submitted that in the CCTV footage dated 22.03.2018 obtained from a house (C-106, Ram Bagh, Uttam Nagar) near the alleged place of occurrence, the deceased is seen at about 01:00 PM. It is submitted that the place of occurrence is the house of one Prateek (C-115, Ram Bagh, Uttam Nagar). The applicant took the keys of the said house from Prateek. Learned APP further submits that one day before the deceased went missing, i.e., on 21.03.2018, the applicant and the deceased can be seen entering a McDonald's outlet at 03:41 PM and



leaving the said place at 03:53 PM.

7. Learned APP for the State further submits that there is a third CCTV footage dated 23.03.2018, where the applicant alongwith CCL are seen with an Alto Car between 04:00 AM and 05:00 AM. It is submitted that the said Alto Car was recovered and the blood samples collected from the said car matched the deceased.

8. Learned APP further submits that the hammer (weapon of offence), mobile phone of the deceased and clothes of the deceased were recovered at the instance of the present applicant and the blood found on the said objects matched the deceased. It is further submitted that the statement of Prateek (in whose house the murder was committed) was recorded and he stated that he had given the keys of the house to the applicant. It is submitted that the statement of a chemist was also recorded who stated that the applicant had bought certain medicines from him. The statement of a shopkeeper was also recorded who stated that the applicant had bought tape etc. from him, which were later used to wrap the dead body.

9. In rejoinder, learned Senior Counsel for the applicant submits that the case of the prosecution is that the alleged murder was committed at C-115, Ram Bagh, Uttam Nagar. Learned Senior Counsel draws the attention of this Court to the statements under Section 161 of the CrPC of Deen Dayal Ranga (resident of C-106, Ram Bagh, Uttam Nagar from where the CCTV footage was collected), SI Sandeep and HC Bijender, wherein they state that 02 boys were seen going in and coming out of the house. It is submitted that the said statements are silent about any dead body being carried out of the house at any point. It is submitted that nothing has been placed on record to demonstrate how the dead body was brought from the house and disposed of



in the *naala*. It is submitted that the CDRs pertaining to the mobile phones of the accused persons were obtained but have not been analysed.

10. Learned Senior Counsel submits that the case of the prosecution is entirely based on circumstantial evidence, which has significant gaps which have not been explained.

11. Heard learned counsel for the parties and perused the record.

12. A perusal of the aforesaid status report and the chargesheet placed on record reflects that the applicant was identified during the course of investigation, initially by way of information obtained from the victim's email ID and thereafter, further with the help of other electronic evidence, including the relevant CCTV footages.

13. The case of the prosecution is admittedly based on circumstantial evidence. The circumstantial evidence relied upon by the prosecution is as follows:

- a) CCTV footage dated 21.03.2018 which shows the deceased alongwith the applicant entering McDonald's, Sector 14, Dwarka at 03:41 PM, placing on order at the counter at 03:43 PM and leaving at 03:53 PM.
- b) CCTV footage dated 21.03.2018 obtained from a wine shop at Sector 14, Dwarka showing the deceased alongwith the applicant exiting from the McDonalds and sitting in a silver Alto car
- c) CCTV dated 22.03.2018 obtained from a camera installed outside House No. C-106, Rama Bagh, Uttam Nagar, Delhi, wherein the deceased is seen outside House No. C-115, Rama Bagh, Uttam Nagar at 01:00 PM
- d) CCTV footage dated 23.03.2018 from House No. C-106, Rama Bagh, Uttam Nagar, Delhi which shows the applicant and CCL alongwith



the Alto car, between 04:00 AM and 05:00 AM.

- e) Statement of Prateek, tenant of a room on the ground floor of House No. C-115, Rama Bagh, Uttam Nagar, who stated that he had given the key of the said apartment to the applicant who was using the same at the relevant time.
 - f) Statement of Saurabh, owner of a shop at Sector 14, Dwarka, who identified the applicant as the person who purchased bandages and tablet from his shop on 22.03.2018.
 - g) Statement of Lalit, a shopkeeper at BR Charpai Store, Shop No. 1, Dwarka Mor, who identified the applicant as the person who bought 5 metres of polythene and rope from him on 22.03.2018.
 - h) Recovery at the instance of the present applicant of the Alto car, hammer, mobile phone of the deceased and clothes of the deceased. It is pertinent to note that the blood samples from the aforesaid objects have matched with the blood sample of the deceased.
14. The aforesaid circumstances *prima facie* show the presence of the applicant and the deceased together on 21.03.2018 and thereafter, the deceased is seen at 01:00 PM outside House No. C-115, Rama Bagh, Uttam Nagar after which he is stated to have gone missing. It is the case of the prosecution that the said place was being used by the applicant. The prosecution also relies on a CCTV footage showing the applicant and the CCL alongwith the Alto car. It is pertinent to note that the blood samples from the said Alto car matched with that of the deceased.
15. In view of the aforesaid circumstances, this Court is not inclined to grant bail to the present applicant.
16. The application is dismissed at this stage and disposed of accordingly.



17. Pending applications, if any, also stand disposed of.
18. Needless to State, nothing stated hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of disposal of the present application.
19. The learned Trial Court is directed to expedite the trial in the present case and complete the same preferably within a period of one year.
20. Order be uploaded on the website of this Court, *forthwith*.
21. Copy of the order be sent to the learned Trial Court for necessary information and compliance.
22. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

AMIT SHARMA, J

FEBRUARY 29, 2024/bsr