



2024:DHC:5871



\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment delivered on: 06.08.2024*+ **BAIL APPLN. 631/2024**

MAZID IN JC

..... Petitioner

Through: Md. Mobin Akhtar, Advocate.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr Raghvinder Varma, APP for the
State with SI Parvesh, PS Mundka.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present application has been filed under section 439 CrPC seeking regular bail in connection with FIR no. 432/2020 under Sections 302 IPC, Police Station Mundka.
2. *Vide* order dated 21.02.2024, notice was issued in the bail application and the respondent/State was directed to file a status report. The respondent has filed a status report dated 07.03.2024, which forms part of the record.
3. The case of the prosecution as borne out from the status report is that on 10.09.2020 a PCR call *vide* DD No. 25A was received at PS Mundka, Delhi regarding death of a lady at Labour Camp, Near CNG Pump, JJ Colony, Bakkarwala, Delhi. The DD Entry was entrusted to ASI Phool Kanwar who was on emergency duty at that time. He reached at the place of occurrence i.e. Labor Camp, Near CNG Pump, JJ Colony, Bakkarwala,



Delhi and found that a lady namely Sabila Khatun aged about 21 Years was lying in an unconscious condition. ASI Phool Kumar made local enquiry and recorded statement of witness/complainant Mujammil, wherein he stated that on 09.09.2020 when he was sleeping at night at his jhuggi the accused/petitioner herein came to the complainant and told that something had happened to his wife. On hearing this he along with accused/petitioner Mazid went there and he saw the deceased wife was lying on the floor. The complainant called neighbours who were residents of nearby Jhuggis. He also found some mark over the neck of Majid's wife. When he asked from Majid, he told the complainant that he has strangled his wife with the help of Pallu of her sari and killed her.

4. Police was informed about the incident later in the morning when safety-in-charge of site, Mr. Anoop Kumar came to enquire in Jhuggis whereupon Majid/petitioner herein accepted his mistake that he killed his wife by strangulation with her saree.

5. ASI called the Mobile Crime team on the spot for inspection, the injured wife of the petitioner was sent to Sanjay Gandhi Memorial Hospital, Mangolpuri, Delhi where she was declared brought dead vide MLC No. 10599 /2020.

6. Accordingly, a case FIR was registered on the statement of Mr. Mujammil/complainant and investigation of the case was taken up by Insp. Bisamber Dayal. During investigation, site plan of occurrence was prepared and statements of witnesses were recorded u/s 161 CrPC. Accused was arrested on interrogation while a post-mortem doctor preserved the Exhibits and the same were sent to the FSL for examination.

7. Postmortem report of deceased was received wherein doctor opined



cause of death due to Asphyxia as a result of ante mortem ligature strangulation however blood and Viscera have preserved to rule out any intoxication. All injuries were antemortem in nature.

8. Chargesheet was filed and subsequently supplementary chargesheet was also submitted after obtaining FSL report.

9. Learned counsel for the petitioner submits that the present case is based on circumstantial evidence. The circumstances pressed into service by the prosecution are an extra judicial confession allegedly made by the petitioner/accused to witness Mujammil (PW-1); another extra judicial confession made to witness Anoop Kumar (PW-7), allegedly videographed by the said witness; yet another extra judicial confession made by the petitioner to Ashraf (PW-2), the brother of deceased, and Mohd. Zamil (PW-4), brother-in-law of the deceased who has been examined by the prosecution to prove that the relations between the petitioner and the deceased were strained.

10. He submits that insofar as complainant – Mujammil (PW-1) is concerned, he had not supported the case of the prosecution and turned hostile. The witness Mohd. Zamil (PW-4) has also stated that he came to know that accused had strangled deceased Sabila, therefore, that the said witness is a hearsay witness. Though the said witness has stated that the petitioner used to beat deceased on one pretext or the other, but he had admitted that he had never stayed with the petitioner and deceased either in Delhi or in village.

11. He further submits that witness Anoop Kumar (PW-7) is not categorical as to the identity of petitioner. Though in his examination-in-chief he stated that he made a video of accused-Mazid



wherein he stated how his wife has died, but in cross-examination he stated that he had not videographed the accused, but it was some other worker who videographed accused Mazid from his mobile.

12. He submits that the video recording that was played in the laptop was played from the CD and not from the mobile phone in question, which was the primary evidence. Elaborating further, he submits that since the video played was from the secondary evidence in the form of CD, the same could not have been looked into without proving the certificate in terms of Section 64B of the Evidence Act. According to the learned counsel the certificate under Section 64B was taken out from the envelope as recorded in the statement of witness Anoop Kumar, but the same has not been exhibited.

13. He further submits that though the witness (PW-7) has correctly identified the accused in the said video but in his cross-examination the said witness has stated that before the date of his cross-examination he had not seen accused Mazid as he could not recognise him. According to the learned counsel, tenor of the statement of the said witness shows that the statement of witness is tentative as to the identity of the accused.

14. Insofar as the statement of Ashraf (PW-2), the brother of deceased is concerned, learned counsel submits that extra judicial confession sought to be proved through him cannot be relied upon since the said witness is an interested witness.

15. He submits that the prosecution has cited 23 witnesses, out of which only 08 witnesses have been examined, therefore, it will take long time for the trial to conclude and the petitioner has already completed 04 years of custody. It is contended that all the material witnesses have already been examined, therefore, there is no possibility of the petitioner tampering with



evidence or threatening the witnesses in the event he is enlarged on bail. Further, the petitioner did not abscond after the alleged incident and joined investigation, which shows that he is not a flight risk.

16. Lastly, it is contended by the learned counsel that the petitioner does not have any criminal record. He, therefore, urges the Court to enlarge the petitioner on bail.

17. *Per contra*, learned APP for the State has argued on the lines of the status report. He submits that the allegations are of serious nature and there is sufficient evidence in the form of extra-judicial confession which was also videographed, which clearly shows petitioner's involvement in the crime. He, therefore, contends that the bail application of the petitioner be dismissed.

18. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have perused the material on record.

19. Undisputedly, the case of the prosecution is not premised on an ocular account. It is a case based on circumstantial evidence and the only circumstance which has been pressed into service is an extra judicial confession allegedly made by the accused/petitioner firstly to complainant -Mujammil (PW-1), then to witness Anoop Kumar (PW-7), who as per prosecution version also videographed confessional statement of accused on his phone and yet again to witness Ashraf (PW-2) when he along with other family members of the deceased met the accused.

20. A perusal of the testimony of complainant - Mujammil (PW-1) shows that the said witness has not supported the case of the prosecution, inasmuch as in his examination-in-chief he stated that the accused did not tell anything about the cause of death of his wife. The said witness was declared as



hostile and was cross-examined by the learned APP for the State, but even in his cross-examination nothing incriminating could be elicited against the accused/petitioner.

21. Insofar as the testimony of witness Ashraf (PW-2), brother of the deceased is concerned, *prima facie* there appears to be some substance in the submission of the learned counsel for the petitioner that the said witness is an interested witness and further in his cross-examination PW-2 has also admitted that no quarrel had taken place between accused and deceased in his presence.

22. In regard to witness Anoop Kumar (PW-7), it is to be noted that though the said witness has identified the accused/petitioner in the video played in the court but during his cross-examination he had stated that before the recording of statement of the accused he had not seen him and thus could not recognise him. He again said that due to change in his physical appearance he could not recognise him today in the court, however, he seems to be same person. In this backdrop, the submission of the learned counsel for the petitioner that witness PW-7 is not categorical and specific as to the identity of the petitioner, *prima facie* does not appear to be without substance.

23. At this stage the submission of the learned counsel for the petitioner cannot be negated all together that what was played in the laptop before the witness was the CD, which in the form of a secondary evidence and a certificate under Section 64B of the Evidence Act with regard to the said CD has not been exhibited. To be noted that the statement of PW-7 shows that though the CD has been given an exhibit i.e. Ex.P-1 but the certificate under Section 64B of the Evidence Act which was taken out from the envelope



along with the CD is not exhibited.

24. A perusal of the statement of Mohd. Zamil (PW-4) also *prima facie* shows that the said statement is also hearsay inasmuch as the said witness has stated that he came to know that the accused has strangled the deceased.

25. It is trite law that extra judicial confession is considered as a weak type of evidence and is only used as a corroborative link to lend credibility to the other evidence on record.

26. The probative value of the testimonies of the witnesses, as well as, their credibility will though be examined by the learned Trial Court at an appropriate stage but an overview of the statements of the material witnesses as referred to above tilts the balance in favour of the petitioner for granting regular bail to him.

27. At this stage, it cannot be overlooked that there is a presumption of innocence in favour of the accused/petitioner. That apart, the petitioner is already in custody for almost 04 years and the conclusion of trial does not appear to be anywhere in sight inasmuch as the prosecution has cited 23 witnesses, out of which only 08 have been examined till date.

28. It is also not the case of the prosecution that the petitioner has a criminal record or there is possibility of the petitioner fleeing from justice in the event he is enlarged on bail. On the contrary, the petitioner did not abscond and remained available for investigation at all relevant times. Further, all the material witnesses have already been examined, therefore, does not appear to be any apprehension that the petitioner is likely to tamper with evidence in case he is enlarged on bail.

29. Considering the above-discussed circumstances, I am of the view that



2024:DHC:5871



the petitioner is entitled to grant of regular bail pending trial. Accordingly. the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- with two sureties of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/Jail Superintendent, further subject to the following conditions:

- a) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide all the mobile numbers to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating officer concerned.
- c) Petitioner shall not directly or indirectly, make any inducement, threat or promise to the witnesses cited by the prosecution.

30. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

31. The petition stands disposed of.

32. Copy of the order be forwarded to the concerned Jail Superintendent for information and necessary compliance.

33. Order *dasti* under the signatures of the Court Master.

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

VIKAS MAHAJAN, J.

AUGUST 06, 2024/MK