



\$~20

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

+ **BAIL APPLN. 713/2024**

RAJU CHAUHAN

..... Petitioner

Through: Mr. S.P. Sharma, Ms. Rekha Sharma
and Mr. Hitesh Sharma, Advs.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Raghuvinder Verma, APP for
State with Insp. Suneel Siddhu, PS.
Mangolpuri.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

%

19.03.2024

1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.297/2021 under Section 302 IPC registered at Police Station Mangolpuri.
2. The case of the prosecution as borne out from the Status Report is that on 05.04.2021, an information was received that a dead body was lying in a park. Accordingly, police officials reached the spot, where they found a person in an unconscious state having multiple injuries on his face. Thereafter, efforts were undertaken to establish the identity of the body.
3. In the meantime, one person namely, Naresh reached the spot and identified the unconscious person as his brother Chanderbhan s/o Sobharam R/o L-956, Mangolpuri, New Delhi, who was missing since 04.04.2021. Naresh specifically alleged that the deceased's scooty was found parked outside the shop of witness-Pardeep, who in turn had informed the family of the deceased that the deceased went with Pradeep (co-accused) and Raju (present petitioner) on their motorcycle. The aforesaid FIR thus, came to be registered.



4. During course of investigation, statement of witness Pardeep was recorded under Section 161 CrPC, who stated that the deceased had parked his scooty in front of his shop and went with co-accused Pradeep and Raju (petitioner herein) on their motorcycle. After sometime, witness-Pardeep called the deceased to collect his scooty but the deceased did not return to collect the same.

5. During further course of investigation, the statements of other witnesses were recorded. The present petitioner, as well as, co-accused Pradeep were also called and questioned, who confessed their involvement and stated that Chanderbhan used to say bad words for them after getting drunk, therefore, they had decided to kill him and they had killed him with the stones found on the road and took his phone also. Thereafter, they consumed liquor in Avantika, Rohini and went to Swaroop Nagar and thereafter, returned back.

6. It was revealed by Raju (present petitioner), as well as, Pradeep (co-accused) that they had left their phone at their respective homes so that their location could not be tracked. They had thrown the phone of the deceased and the knife used in the murder in Swaroop Nagar and had thrown the stone at the side of the park.

7. Subsequently, the present petitioner was arrested on 07.04.2021. It is the case of the prosecution that no recovery was made at the instance of the co-accused Pradeep but blood-stained stone was recovered at the instance of the present petitioner from the park.

8. Further, at the instance of both the accused, blood-stained clothes were recovered from their respective houses, however, DNA could not be generated from the clothes of the accused persons.



9. The learned counsel for the petitioner submits that there is no eye witness in the case and the only incriminating circumstance is the recovery of blood-stained stone at the instance of the petitioner. He submits that the said blood-stained stone was recovered from an open park visited by the public and not from any hidden place, therefore, the recovery of the stone itself is doubtful.

10. He further submits that Jaipal, the brother of the deceased, who was examined as PW-1, in his cross-examination has admitted that after the death of deceased, he had given an interview in TV Channel named “Ham Vatan” where he narrated that his deceased brother had neither animosity with anybody nor there was any monetary transaction with anyone. PW-1 further stated that his brother was taken by some people sitting in Santro Car, which is contrary to the prosecution version of last seen propounded through PW-2 witness Pardeep who in his statement under section 161 CrPC stated that the present petitioner with co-accused Pradeep had taken deceased Chanderbhan on a motorcycle.

11. He submits that the last seen witness Pardeep, who was examined as PW-2, has not supported the case of the prosecution and was declared hostile and despite being cross examined by the learned APP nothing could be elicited from him against the petitioner.

12. He submits the case of the prosecution is that the deceased and the accused had consumed alcohol and thereafter, a fight ensued between them in which the accused committed the alleged offence. The FSL report of the viscera of the deceased reveals that no alcohol was detected from the blood of the deceased. Thus, the FSL report does not support the case of the prosecution.



13. He further submits that all the material witnesses have been examined and their testimonies also suffers from material contradictions *vis-a-vis* their statements recorded under Section 161 CrPC. He submits that co-accused Pradeep, who is the main accused as per the prosecution version, has already been granted bail by this Court *vide* order dated 01.11.2023 passed in BAIL APPLN. 1238/2023. According to the learned counsel, the petitioner has clean antecedents.

14. In the backdrop of aforesaid facts, it is urged that the petitioner may be enlarged on bail.

15. *Per contra*, the learned APP for the State has argued on the lines of the Status Report.

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

17. The co-accused Pradeep against whom similar allegations have been made have already been enlarged on bail by this Court *vide* order dated 01.11.2023 passed in BAIL APPLN. 1238/2023. The only difference is that no recovery was made at the instance of co-accused Pradeep whereas blood-stained stone was recovered at the instance of the present petitioner.

18. There is some merit in the submission of the learned counsel for the petitioner that the recovery of stone is from an open park which is a public place visited by general public and such recovery has not been made from hidden place, therefore, the recovery of blood-stained stone itself is doubtful.

19. Further, case of the prosecution is that the deceased and the accused had consumed alcohol and thereafter, a fight ensued between them in which the petitioner and co-accused Pradeep committed the alleged offence. At the



time of conducting the post-mortem the viscera of the deceased was preserved and same was sent to the FSL for examination, the report thereof reveals that no alcohol was detected from the blood of the deceased. Thus, *prima facie* there appears to be substance in contention of the petitioner's learned counsel that the FSL report does not support the case of the prosecution.

20. The contention of the learned counsel for the petitioner that the last seen witness i.e., PW-2/Pardeep has not supported the case of the prosecution does not seem to be without substance.

21. Further, there also seems to be some merit in the contention of the learned counsel for the petitioner that the brother of the deceased had also given a contradictory version in an interview to a TV Channel.

22. Though the probative value of the evidence will be seen by the learned Trial Court at the stage of trial but the aforesaid circumstances coupled with the fact that the co-accused Pradeep whose role is also similar to the present petitioner has been granted bail, tilts the balance in favour of the petitioner for the grant of bail.

23. Besides that, out of the 26 witnesses cited by the prosecution only 06 witnesses have been examined till date, therefore, large number of witnesses are yet to be examined. Thus, inevitably the trial will be a protracted one.

24. The petitioner is in custody for almost three years. The investigation is complete and in the facts of the present case, no useful purpose will be served in keeping the petitioner behind bars.

25. On a query posed by the Court, the learned APP on instructions from the I.O, who is present in Court fairly states that the petitioner does not have any criminal record. It is also not the case of the prosecution that the



petitioner is a flight risk.

26. Considering the aforesaid circumstances in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall not leave the Delhi without prior permission of the Court.
- b) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- c) Petitioner shall provide mobile number 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.
- d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

27. The petition stands disposed of.

28. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.

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

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

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

VIKAS MAHAJAN, J

MARCH 19, 2024/dss