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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 726/2024**
PRADEEP SHARMA IN J.C.

..... Petitioner

Through: Mr.Sanjeev Kr. Anand &
Mr.Vikas Bhardwaj, Advs.

versus

THE STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr.Aman Usman, APP.
SI Amit Verma, PS Hari Nagar.
Insp. Ajay Karan Sharma.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
06.05.2024

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1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for the applicant to be released on Bail in FIR No.0390/2018 registered at Police Station: Hari Nagar, West-District, Delhi, under Sections 302/201/34 of the Indian Penal Code, 1860 (in short, 'IPC').
2. It is the case of the prosecution that on 02.09.2018, the applicant on receiving a call from his friend Mukesh @ Bhola, at about 5:00 PM, reached the shop of Mohd. Shahzad Sheikh at S-Block, Vikas Nagar, Shiv Vihar. At around 7:00 PM, Mukesh @ Bhola came along with the deceased Vishal @ Ganja on a motorcycle. Mukesh @ Bhola asked the deceased Vishal to go back to his house (Vishal's House) along with him and tell his family that he is with



Mukesh @ Bhola and he shall be returning after some time. He asked the deceased to leave his mobile phone with Shahzad otherwise he would not return with him from his house. Mukesh @ Bhola and the deceased left their phones with Shahzad at his shop and thereafter the applicant, Mukesh @ Bhola along with the deceased on their respective motor bike went to the deceased's house. While the applicant remained downstairs and was seen by the wife of the deceased from the upper floor, the deceased and Mukesh @ Bhola entered the house and after some time came back with a bottle of water. Thereafter, all three of them on their bikes came back to the shop of the Shahzad. On the way, Shahzad called the applicant from the phone of Mukesh @ Bhola. When they reached the shop of Shahzad, Mukesh @ Bhola from the mobile phone of the applicant called Sunny to come to the shop of the Shahzad. A little later Sunny, Rizwan, Alok and Roshan came to the shop of Shahzad and all of them went to an empty plot of land at S-Block, Gali No. 12, Shiv Vihar, where they normally go to consume drugs. Once they reached there, Rizwan kicked the deceased and started abusing him and stated that he had informed the Police about Mukesh @ Bhola because of which Mukesh @ Bhola had to go to jail. They feared that the deceased would now inform the Police about them and they will also have to go to jail. Thereafter, all of the present accused persons started beating the deceased. On the instigation of Mukesh @ Bhola, the applicant and Shahzad tied both the hands of the deceased at his back. Mukesh @ Bhola took out a knife from his trouser and stabbed the deceased near his hips. He then took out the knife because of which



lot of blood started oozing out from the deceased. All the accused persons, thereafter, left on their motor bikes. Next day, Mukesh @ Bhola, Rizwan and Sunny came to know that the deceased had died. They dumped his body near DDU Hospital. From the applicant, his mobile phone was recovered.

3. The learned counsel for the applicant submits that there is no evidence against the applicant of having committed the crime. He submits that the co-accused, Mohd. Shahzad, who is also alleged to have tied the hands of the deceased along with the applicant, already stands discharged by the learned Trial Court vide its order dated 16.02.2022.

4. He submits that the entire case of the prosecution is based on the alleged statement of PW Anjali, wife of the deceased, who is supposed to have seen the applicant when he along with Mukesh @ Bhola and the deceased had gone to the house of the deceased. He submits that in spite of repeated opportunities granted, Anjali is not traceable and is not produced before the learned Trial Court. He submits that presently there is no evidence against the applicant.

5. He further submits that the applicant has been in custody for a period of more than 3 years, and even otherwise, has clean antecedents.

6. On the other hand, learned APP, on instructions from the Investigating Officer (IO), submits that the applicant has played a crucial role in causing the death of the deceased. He submits that he was last seen with the deceased by Anjali, wife of the deceased. He submits that efforts are being made to locate the whereabouts of Anjali



and, therefore, the applicant be not released on bail.

7. The learned APP also submits that the CDR shows the location of the applicant on the date of the incident at the spot of the murder.

8. The learned APP submits that the discharge of Mohd. Shahzad from the case is not relevant inasmuch as, against the applicant, Anjali's statement shows that the applicant was last seen with the deceased, and his CDR confirms the said statement.

9. I have considered the submissions made by the learned counsels for the parties.

10. As is evident from the above, the case against the applicant hinges around the alleged statement of Ms. Anjali, who is stated to have seen the applicant along with the deceased when he visited their house before the alleged murder. Presently, Anjali is not traceable and has not been produced before the learned Trial Court over a last number of dates. The IO presently also is not in a position to state if the whereabouts of Anjali can be traced and she can be produced any time soon before the learned Trial Court.

11. As far as the case of the prosecution that the applicant along with Mohd. Shahzad had tied the hands of the deceased at his back is concerned, it is relevant to note that Mohd. Shahzad already stands discharged by the learned Trial Court vide its order dated 16.02.2022.

12. On the submission of the learned APP that the CDR shows the location of the applicant on the date of the incident to be at the spot of murder, the learned counsel for the applicant submits that the CDRs and the location shown therein may not be relevant inasmuch as the applicant is a resident of that area. For the purposes of the deciding the



present bail application, I need not go into this controversy.

13. As per the latest nominal roll filed on record, the applicant has been in custody for more than 3 years. He does not have any criminal antecedents. He was earlier also released on *interim* bail, which indulgence is not alleged to have been misused. As noted hereinabove, the whereabouts of Anjali are presently not known. Therefore, in my opinion, the applicant has been able to make out a case for being released on bail.

14. Keeping in view the above circumstances, it is directed that the Applicant be released on Bail in FIR No.0390/2018 registered at Police Station: Hari Nagar, West-District, Delhi on furnishing a personal bond in the sum of Rs.25,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- ii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iii. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the Applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned.
- iv. The Applicant shall not indulge in any other criminal



activity, shall not come in the vicinity of the deceased's family, or try to make any communication with or come in contact, directly or indirectly, with any of the prosecution witnesses or the deceased's family.

- v. In case the Applicant is found involved in another case, it will be open to the prosecution to file an appropriate application seeking cancellation of his Bail in the present case as well.

15. Needless to state, any observation touching upon 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 the merits of the matter.

16. The Bail Application is disposed of in the above terms. The pending application is also disposed of.

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

NAVIN CHAWLA, J

MAY 6, 2024/rv/ss

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