



2024:DHC:3747



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

Date of decision: 07.05.2024

+ **BAIL APPLN. 1030/2024**

KRISHAN PAL @ BOBBY

..... Petitioner

Through: Mr.Akhilesh Kr. Pandey,
Mr.Manoj Kr., Ms.Manisha &
Mr.B.P. Gautam, Advs.

versus

STATE GOVT OF NCT OF DELHI Respondent

Through: Ms.Priyanka Dalal, APP.
Insp. Sunil, PS Ashok Vihar.
Insp. Harender, PS Special
Branch.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This application has been filed by the Applicant under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for being released on Bail in FIR No. 85/2019 registered at Police Station: Ashok Vihar, North-West District, Delhi, originally under Sections 302/34 of the Indian Penal Code, 1860 (in short, 'IPC').

2. It is the case of the prosecution that on 07.03.2019, a PCR call was received at Police Station: Ashok Vihar,

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informing that a person is found lying unconscious at A-70, Wazirpur Industrial Area, Delhi, near Bajaj Showroom. The Police party reached there and found a male person lying on the road. He was taken to the Deepchand Bandhu Hospital through CATS ambulance, where the Doctor declared him 'brought dead'.

3. The prosecution alleges that during the course of the investigation, statement of the wife of the deceased, namely, Smt. Beena, was recorded wherein she stated that 4-5 days prior to the incident, the co-accused, Sanjay @ Anna, Rajbir @ Rambir and Chunnilal @ Murga had visited her house and asked about her husband. At that time, her husband was not at home. It is alleged that she further stated that all the three accused were in anger and threatened that their friend Monu, a co-accused, is about to come out of jail and once he does so, they will fix the deceased.

4. It is stated that during the course of further investigation, statement of Smt.Sapna Shukla @ Golu was also recorded wherein she stated that she is a friend of the deceased and on 06.03.2019, at around 9:00 PM, the deceased told her on the mobile phone that he will come at night to meet her. It is alleged that when the deceased did not come to the house even after a long time having been passed, she came out of her jhuggi at around 01:55 AM on the intervening night of 06.03.2019 and 07.03.2019 and walked towards the railway line and saw the co-

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accused persons along with the applicant running towards the underpass of the railway line chasing the deceased.

5. The prosecution also alleges that a CCTV Camera was found installed at Jhuggi No.F-261, S.S. Nagar, Wazirpur Industrial Area, Ashok Vihar, Delhi, which is near the place of the incident. It is alleged that the said CCTV footage, according to the prosecution, shows the co-accused along with the Applicant together in the street and one of the co-accused is seen removing blood stained pants of one of the co-accused. Further details of the case of the prosecution need not be stated herein at this stage.

6. The learned counsel for the applicant submits that the statement of Smt.Sapna Shukla already stands recorded before the learned Trial Court. He submits that she did not support the case of the prosecution and was declared hostile. He further submits that the Applicant has been in custody for almost five years. He submits that the statement of only one witness out of the total of 24 witnesses cited by the prosecution has been recorded before the learned Trial Court. The said witness has also not supported the case of the prosecution. He further submits that as regards the criminal antecedents alleged against the Applicant, one case has already been compounded; though the applicant was convicted of the offence under Sections 324/302/307 of the IPC in one of the cases, and the sentence has been suspended by this Court in an appeal filed against the

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order of conviction; in one case the trial is still pending; and for one the Applicant was sentenced only with fine.

7. On the other hand, the learned APP submits that the petitioner has been charged with committing a heinous crime of having murdered the deceased along with a co-accused in a brutal manner. She submits that merely because one of the witnesses has turned hostile, it would not give a ground to the Applicant to be released on bail. She submits that there are other important witnesses, including the wife of the deceased, who are yet to be examined before the learned Trial Court. She submits that the wife of the deceased is a vital witness to the case of the prosecution and there is an apprehension that if the Applicant is released on bail, he may tamper or influence the said witness. She further submits that the Applicant has criminal antecedents and in some of them, he has been convicted.

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

9. In **Anil Kumar Yadav v. State (NCT of Delhi)**, (2018) 12 SCC129, the Supreme Court has laid down the principles that must be kept in mind by a Court while considering an application under Section 439 of the Cr.P.C.. The same are reproduced hereinunder:-

“17. While granting bail, the relevant considerations are : (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the

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accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.

18. *While considering the basic requirements for grant of bail, in State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21, this Court has held as under : (SCC p. 31, para 18)*

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [Prahlaad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280] and [Gurcharan Singh v. State (NCT of Delhi), (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant

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or refusal of bail stated in [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC] : (SCC pp. 535-36, para 11)

'11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598] and [Puran v. Rambilas, (2001) 6 SCC 338]''

19. *The test to be applied for grant of bail was also considered in Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13 , wherein it was held as under : (SCC pp. 21-22, para 16)*

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“16. ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in [State v. Jagjit Singh, (1962) 3 SCR 622] and [Gurcharan Singh v. State (NCT of Delhi), (1978) 1 SCC 118] and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.”

10. In the present case, the applicant has been charged with the offence, including under Section 302 of the IPC. The prosecution alleges that the wife of the deceased had been threatened by the co-accused stating that they would teach a lesson to the deceased once a co-accused Monu comes out of custody. There is also a CCTV footage which shows the Applicant along with the co-accused, including the co-accused, who had threatened the wife of the deceased, around the time of the incident helping the other in removing his pants which contained blood stains of the deceased. There are also recoveries alleged to have been made at the instance of the co-accused. In any case, these are matters of trial and this Court should not enter into much detail of the same at this stage. The effect of one of the witnesses having turned hostile is also to be

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considered by the learned Trial Court on the completion of the evidence.

11. I, therefore, do not deem it appropriate to release the Applicant on bail at this stage.

12. At the same time, it is noticed that the Applicant has been in custody for almost five years and the trial has not progressed. Evidence of only one witness has been recorded. The learned Trial Court is, therefore, requested to expedite the trial and make an endeavour to dispose it of within a period of one year from the first listing of the trial before it post this order. Parties must cooperate in this endeavour, to be so made by the learned Trial Court.

13. The application is disposed of with the above observation/directions.

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

15. A copy of this order be also sent to the learned Trial Court for information and necessary compliance.

NAVIN CHAWLA, J

MAY 7, 2024/rv/AS

Click here to check corrigendum, if any

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