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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1037/2024

SALKIN@SAKIB@SHAKIR

.....Applicant

Through: Mr. K.K. Vaid, Adv.

versus

STATE GNCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State
Inspector Vikas Malik, PS-
M.S. Park

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

18.09.2024

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1. The present application is filed seeking regular bail in FIR No. 497/2014 dated 04.09.2014 registered at Police Station Mansarovar Park for offence under Section 302 of the Indian Penal Code, 1860 ('IPC').
2. Chargesheet in the present case has been filed for offences under Sections 302/376D/377/174-A/34 of the IPC.
3. The FIR was registered on a PCR call where it was informed that a dead body of a lady is found. The body was found without clothes and deep wounds were visible on the neck of the body.
4. During the course of investigation, one co-accused, Sakil was arrested on 05.09.2014. The applicant was named as an accomplice by the accused, Sakil in the commission of the crime.
5. It is undisputed that the applicant, thereafter, absconded and was declared Proclaimed Offender. He was arrested on 03.04.2018.
6. The learned counsel for the applicant submits that there are

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serious doubts in the version of the prosecution. He submits that the chargesheet was filed alleging that the co-accused, Sakil, had made an extra-judicial confession to one witness, namely, Vishal. He submits that the said witness, Vishal, had claimed to be the Contractor in the building where the dead body of the victim was found. It was also alleged by the prosecution that the co-accused, Sakil, at the time of the incident, was working as a Watchman in the said building and had called the witness, Vishal, and confessed about the crime. He submits that the witness, Vishal, during his examination, has not been able to show that he was working as a Contractor in the said building and has further not been able to show that the co-accused, Sakil, at any point of time, was working as a Watchman in the said building.

7. He further submits that the mother of the deceased has deposed that she suspects that the murder was committed by the husband of the deceased.

8. He lastly contends that the applicant is in custody for more than six years and all the prime witnesses have been examined, therefore, the applicant is no longer required to be in custody.

9. The learned Additional Public Prosecutor for the State submits that the DNA sample of the applicant has matched with the DNA collected from the vaginal swab and, thus, there is scientific evidence to prove that the applicant had sexual intercourse with the deceased prior to her death. He submits that there is no reason pointed out as to why the applicant would be sought to be falsely implicated by the prosecution or the co-accused. He further submits that the conduct of the applicant to have not cooperated and not participated in the trial, and, subsequently, been declared Proclaimed Offender, does not entitle him of any relief.



10. It is undisputed that long period of incarceration of an undertrial prisoner falls foul of Article 21 of the Constitution of India.

11. However, at the same time, it cannot be ignored that punishment prescribed for offences under Sections 302/376D of the IPC is imprisonment for the remainder of life. Undoubtedly, the trial has been delayed, however, one of the reasons for the delay in trial is that the applicant was being declared Proclaimed Offender.

12. The Hon'ble Apex Court, on numerous occasions, has held that when the trial is not likely to conclude in near future and substantial period of time has been spent in custody, the bail should normally be granted. It is, however, pointed out that only ten witnesses remain to be examined. On being asked, it is pointed out that the matter has been tried in a Fast Track Court and there is every possibility that the trial would conclude within a period of next five to six months.

13. In view of the above, this Court does not consider it apposite to entertain the present application when the trial is at a fag end.

14. The applicant is at liberty to file the application afresh in case the trial does not conclude within a period of five to six months.

15. The petition is disposed of with the aforesaid observations.

AMIT MAHAJAN, J

SEPTEMBER 18, 2024

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