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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1089/2024**
NAGENDER (IN JC)Petitioner

Through: Mr. Dhan Mohan, Ms. Tanu B. Mishra, Mr. Ravi Mishra, Mr. Ratnesh Kumar, Mr. Siddharth Malhotra, Ms. Purnima Malhotra and Ms. Tanisha Bhatia, Advocates.

versus

THE STATE GOVT OF NCT OF DELHIRespondent
Through: Mr. Manoj Pant, APP for the State with Mr. Akshay, Mr. Abhilash Butani, Ms. Sofiya Gulati and Ms. Rinny Abraham, Advocates.
Inns. Mahendra Kumar, P.S.: Shahbad Dairy.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI
ORDER
22.08.2024

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By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 327/2015 dated 10.03.2015 registered under section 302 of the Indian Penal Code, 1860 ('IPC') at P.S.: Shahbad Dairy, Delhi ('subject FIR').

2. Notice on this petition was issued on 28.03.2024.
3. Status Report dated 16.05.2024 has been filed in the matter.
4. Nominal Roll dated 13.05.2024 has also been received from the Jail Superintendent.



5. Mr. Dhan Mohan, learned counsel appearing for the petitioner submits, that the petitioner has been arraigned as an accused in the murder of one Shabana Parveen, in an incident that is stated to have occurred on the intervening night of 09.03.2015 and 10.03.2015.
6. Learned counsel submits, that as would be seen from a perusal of the chargesheet, the initial information about the death of Shabana Parveen was given by her father, who said that he was unaware as to who had committed the offence.
7. Counsel submits that the petitioner was arrested on 10.03.2015 and a *kalandra* purportedly dated 11.03.2015 was prepared, which records that the petitioner was arrested from a public road on the basis of information received from a secret informer, whereupon, the prosecution says the petitioner confessed to commission of the offence and that the cellphone of the deceased was also recovered from the personal search of the petitioner.
8. It is further pointed-out, that the *kalandra* also records that the weapon of the offence as well as the blood-stained clothes worn by the petitioner at the time of commission of the offence, were also recovered from him.
9. Mr. Dhan Mohan argues that through the course of the trial, the prosecution has sought to rest its case on the shoulders of PW-9, who is stated to be running a mobile recharge shop, and says in his statement that the petitioner had had his mobile No. 8802375708 recharged at his shop on 09.03.2015.
10. Furthermore, it is submitted that the prosecution has also relied on the statement of PW-10, who is the person in whose name the SIM card



of mobile phone No. 8802375708 stands registered; but who has deposed to say that he had merely “*given*” his SIM card for use to the petitioner “*in the year 2015*”, despite the fact, that on his own statement, PW-10 did not have any friendship with the petitioner; and only knew the petitioner as a resident of the same locality.

11. Counsel argues, that the connection sought to be established by the prosecution between the SIM card and the offence, is that the petitioner is alleged to have been in telephonic contact with the deceased using the mobile number associated with that SIM card.
12. It is also argued that it is noteworthy that the person in whose name the SIM card is registered has not been arraigned as an accused; and his statement that he had simply ‘given’ his SIM card to a person (*viz.* the petitioner) who is not his friend and who he only knew as a resident of the same locality, has been readily accepted by the prosecution and forms the basis of their case.
13. It is further argued, that as would be seen from Nominal Roll dated 13.05.2024 received from the Jail Superintendent, the petitioner has already spent about 06 years and 03 months in custody as an under-trial as of that date; that the jail conduct of the petitioner has been ‘satisfactory’; and that he is working as *sahayak* in the jail voluntarily, even though he is an undertrial. It is pointed-out that the nominal roll also records that the petitioner has no other criminal involvement; nor has he been subject to any prison punishment throughout the period of his custody of more than 06 years.
14. It is also noticed that the petitioner was released on interim bail on two occasions, including for about 03 years on emergency parole



during the then prevailing pandemic and there is no allegation that the petitioner ever jumped interim bail or that he violated any condition thereof.

15. Mr. Dhan Mohan also points-out that at the time of the commission of the offence in 2015, the petitioner was about 18 years and 09 months of age; and was a student of 1st Year in a Bachelor of Arts course.
16. On the other hand, Mr. Manoj Pant, learned APP appearing for the State submits, that there is compelling evidence against the petitioner, which shall be proved in the course of the trial. Learned APP submits, that the trial is at its fag-end; and that all public and official witnesses have been examined, except 03 police officials including the Investigating Officer, who are the only witnesses who remain to be cross-examined. He further submits, that the trial will likely be completed very soon.
17. However, Mr. Dhan Mohan submits, that quite apart the fact that the prosecution evidence is not yet over, the petitioner would also be leading defence evidence.
18. In the circumstances, what weighs with the court at this stage is principally the fact that the petitioner has been in judicial custody for more than 6½ years as an under-trial; and that he has been released on interim bail and emergency parole for about 03 years and there is no allegation that he violated any conditions of interim bail/emergency parole. Furthermore, the petitioner's jail conduct has also been 'satisfactory' and he has no other criminal involvement.



19. In view of the above, this court is persuaded to admit the petitioner – **Nagender s/o Ram Kumar** – to *regular bail* pending trial, subject to the following conditions :
- 19.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned Trial Court;
- 19.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 19.3. If the petitioner has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned trial court;
- 19.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
- 19.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer.
20. Since the petitioner is facing trial and is therefore appearing before the learned Trial Court from time-to-time, it is not considered necessary to place a reporting requirement as a condition of bail.



21. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
22. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
23. The petition stands disposed-of in the above terms.
24. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 22, 2024/V.Rawat