



2024:DHC:5036



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Pronounced on: 09.07.2024*+ **BAIL APPLN. 1453/2023**

VIKAS

..... Petitioner

Through: Mr. D. V. Goyal, Advocate.

versus

THE STATE GOVT. OF NCT DELHI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for the
State with Insp. Arun Sindhu, ARSC,
Crime Branch.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition has been filed under section 439 CrPC seeking regular bail in connection with FIR No. 352/2017 under sections 302/396/201/120-B/34/395 and 412 IPC, registered at Police station Mansarovar Park.
2. The case of the prosecution as borne out from the status report is that on 07.10.2017, an information was received at PS Mansarovar Park, regarding murder. The police reached the spot (1/561, Main GT Road, Shahdara Delhi), where one dead body of a male person (the gatekeeper) namely, Rakesh was found lying on the ground floor near the parking area



and four dead bodies of - (1) Anjali Jindal, aged 38 years; (2) Sangita Jindal, aged 55 years; (iii) Nupur Jindal, aged 48 years; and (4) Urmila Jindal, aged 82 years; were found in a room of the first floor of the above address. The room was in a disturbed condition and there were many cut/stab and slit wounds present near the neck of all the deceased persons. This led to the registration of the present FIR initially under sections 302/34 IPC.

3. Secret sources were deployed to collect the information about the accused persons and the case was transferred to the Crime Branch.

4. During the course of investigation, it was revealed that the phone number of the deceased Rakesh who was working as a security guard was in constant touch with the phone number of the present petitioner who happens to be son-in-law of Rakesh.

5. During investigation it transpired that the petitioner's father-in-law Rakesh went to his village and informed the petitioner that the owners of Jindal family are very rich and holds cash & gold jewellery in their house. Thereafter, the petitioner and his father-in-law along with their other associates namely Anuj (brother-in-law of the petitioner), Sunny, Vikas@Vicky, Rahul, Neeraj, Deepak and Nitin hatched a conspiracy to commit dacoity at the house of the owners of Jindal Oil Mills i.e. 1/561, GT road, Shahdara, Delhi.

6. In the execution of their plan on 25.09.2017 between 05:00-06:00PM, Vikas (present petitioner) along with Sunny and Anuj went to Mansarovar Park and met Rakesh there and surveyed the area. Thereafter all the accused assembled in Baghpat and finalized their plan.

7. On 06.10.2017 as per their plan Vikas@Vicky, Anuj, Sunny, Vikas (the present petitioner), Rahul, Nitin, Neeraj and Deepak assembled in Loni



at around 05:00 PM and they all switched off their mobile phones. Thereafter, except Neeraj all the seven members reached near Shahdara Red Light in two auto rickshaw and at 01:00AM, on the intervening night of 05-06.10.2017, all of them met Rakesh and went to his guard room. As per their plan, Rakesh called the owner through door and Nupur (deceased) opened the gate of stairs, Rakesh informed her that his son Anuj and his son-in-law Vikas had come to meet him to which Nupur replied and asked him to make them stay in his guard room. Immediately Vikas (the present petitioner) held Nupur from behind, gagged her mouth and dragged her inside the room and then slit her throat after stabbing her with a knife.

8. Thereafter all the other six persons entered the house and Rakesh stood at the gate to give an alarm in case he sees any outsider. They broke the almirah and safe of the house and looted the cash and jewellery. While returning, Vikas (present petitioner) also slit the throat of Rakesh (father-in-law) as he had an apprehension that Rakesh might spill the beans in case he is interrogated by the police. Later on, all the seven persons escaped the scene of crime on foot and distributed the looted cash and jewellery in a park near GTB Hospital.

9. Mr. Goyal, the learned counsel for the petitioner at the outset submits that the petitioner has been falsely implicated in the present FIR. The allegations levelled against the petitioner in connection with the present FR are totally false and fabricated in as much as there is no cogent or reliable evidence against the petitioner.

10. He submits that there is no recovery of cash, jewellery or weapon of offence linked to the present petitioner. Further the alleged incident is of 07.10.2017 and the disclosure statement of the petitioner was recorded on



06.12.2017 which clearly shows that the same has been recorded by putting the petitioner under threat.

11. He submits that the knife which was found lying at the spot, does not contain any blood stains, which creates a reasonable doubt in the story of the prosecution. He submits that the case of the prosecution is completely based on circumstantial evidence and none of the circumstances explained in the charge sheet connects the applicant with the alleged offence.

12. Additionally, he submits that the offence of dacoity cannot be invoked in the present case as the ingredients of same are not fulfilled because of the fact that the gold and silvery jewellery articles along with the cash was seized by the IO from the spot of the incident itself.

13. He further submits that there is no recovery of any stolen article from the possession of the present applicant which connects him to the alleged dacoity. Further, the entire chargesheet fails to specify the role of the applicant is the alleged dacoity-cum-murder and there is also no material to connect the present applicant to the alleged offence or the criminal conspiracy thereof. He submits that the present case is fully based on circumstantial evidence and in such cases, unless the prosecution proves each and every circumstance definitely pointing towards the guilt of the accused, the accused cannot be held guilty.

14. He submits that there is no public witness of the alleged incident. Further, out of 46 witnesses only 5-6 witnesses have been examined till date, therefore the conclusion of trial is likely to take a long time.

15. Lastly, he submits that the petitioner is 32 years old and has clean antecedents. He, therefore, urges the court to enlarge the petitioner on bail. To support his contentions, the learned counsel has also placed reliance on



the decision of this Hon'ble Court in *Deepak Chadha vs State (CRL A 138/1999) DOD 20.01.2012*.

16. *Per contra*, the bail application is highly opposed by the learned APP for the state who has argued on the lines of the status report.

17. He submits that during the investigation and after going through the injuries inflicted upon the deceased persons and also from the post mortem report, it was revealed that the persons who had inflicted injuries on the deceased were aware about the vital organs of human body, which can cause death instantaneously and while trying to work on the inputs, it came to the notice that the son-in-law of Rakesh i.e. the petitioner herein was working in GTB hospital as a sweeper and had knowledge about the vital organs of the human body, since he had worked in various departments of GTB Hospital and he had knowledge about the vital organs of the human body. Thereafter, close and continuous watch on the movement of the petitioner was kept and all the persons in touch with him were interrogated again and again.

18. He further submits that as per the investigation conducted and analyses of CDRs, it was revealed that the Mobile Phone No. 9911437059 of the deceased Rakesh, who was the Security Guard in the premises reflected that deceased Rakesh Kumar was continuously in touch with one mobile phone number which was found to be of the present petitioner. After further analysis of the mobile phone number of the petitioner herein, its location after the incident was found in his village Kandhera (U.P.) and on discreet enquiry, it came to light that the petitioner was found absent from his duty. Further the analysis of the phone number of the petitioner revealed that on 07.10.2017 he was continuously in contact with one mobile number which belonged to his neighbour Sunny.



19. Mr. Bahri also contends that the petitioner was not present at the time of Post Mortem of deceased-Rakesh (petitioner's father-in-law) in GTB Hospital though he was working in the same hospital, which is also one of the factors that aroused suspicion on the petitioner herein.

20. Further during investigation clothes, shoes with blood stains on them and one mobile phone were also recovered at the instance of the present petitioner (one knife left on the spot i.e. near the dead body of deceased Rakesh after committing the crime). The blood-stained clothes and shoes which were recovered were sent to FSL for examination. As per the FSL report of the Blood DNA profiling, the DNA of the blood of the deceased persons had been found matching with the recovered blood-stained clothes and shoes of the petitioner-Vikas and other accused persons.

21. Besides this, the family members of the accused persons were also threatening the main witnesses and surviving member of the deceased's family namely Rakesh Jindal and in this regard one FIR bearing FIR No. 310/2018 u/s 341/195A/506/34 IPC has also been registered at PS Crime Branch, Delhi.

22. Learned APP has also expressed his apprehension of the petitioner will temper with the evidence and may threaten the witnesses in case he is enlarged on bail.

23. I have heard the learned counsel for the petitioner as well as Ld. APP for the state and have perused the record.

24. Admittedly there is no eye-witness to the occurrence of the offence. The prosecution rests its case only on certain pieces of circumstantial evidence to substantiate the charges which are levelled against the petitioner.



25. It is well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave cannot be a substitute for a proof, and the courts shall take utmost precaution in finding an accused guilty on the basis of the circumstantial evidence.¹ This determination is not to be made at the present juncture while considering the bail plea, but rather by the trial court at an appropriate stage of the proceedings.

26. It is irrefutable that the authority conferred under Section 439 of the Criminal Procedure Code to grant bail is extensive. However, numerous judicial decisions have consistently underscored that the exercise of this discretionary power by the Court, in the context of granting bail, must be undertaken judiciously and not as a routine practice.

27. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr. (2010) 14 SCC 496*** where the accused was facing trial for an offence punishable under section 302 IPC, the High Court had granted him bail, which order was set aside by the Hon'ble Supreme Court and some guidelines were enunciated which are to be borne in mind while considering an application for bail, which reads as under:

“9.....It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously,

¹Ramreddy Rajesh Khanna Reddy vs State of AP (2006) 10 SCC 172



cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering 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 accusation; (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 influenced; and (viii) danger, of course, of justice being thwarted by grant of bail."

28. Reference may also be had to the decision of the Supreme Court in *Satish Jaggi v. State of Chhatisgarh* (2007) 11 SCC 195, wherein the Supreme Court has held in cases of non-bailable offences, the primary factor to be taken into account while considering the bail application is the nature and gravity of the offence. The observations reads as under:

"12. Normally if the offence is non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges



levelled against him even before the trial. The trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. At the stage of granting of bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.”

(Emphasis supplied)

29. It is a well-established principle that a crime, although committed against an individual, does not invariably remain a matter of individual concern. While the direct victim may be an individual, ultimately, the societal fabric itself bears the brunt of the offense. A crime, as commonly understood, disrupts the law and order situation. In a civilized society, a crime undermines societal orderliness and adversely impacts the peaceful existence of the community. The alleged offence is the one which is not only grave and heinous but inflicts harm upon society at large. Five murders have been committed in the process of executing another offence of dacoity. There is an allegation that the petitioner and other co-accused even killed the father-in-law of the petitioner Rakesh, who was accomplice in the crime and being guard at the residence of Jindal's facilitated the entry of accused person in the house. If proved, the offence will attract the severest of punishment-an imprisonment for life or death penalty.

30. The incriminating circumstances on which the case of the prosecution rests are - (i) CDRs have revealed that the petitioner was continuously in touch with his father-in-law, deceased Rakesh on his mobile phone number 9911437059; (ii) further analysis of the mobile phone number of the



petitioner reveals that his location after the incident was found in his village Kandhera (U.P.); (iii) on discreet enquiry, it came to light that the petitioner was found absent from his duty on the date of incident; (iv) analysis of the phone calls made by the petitioner from his mobile revealed that he was continuously in contact with co-accused Sunny on 07.10.2017; (v) the petitioner was not present at the time of Post Mortem of his father-in-law deceased-Rakesh in GTB Hospital though he was working in the same hospital, which is also one of the factors that aroused suspicion about petitioner's involvement; (vi) the injuries inflicted upon the deceased persons as also the post mortem report revealed that the persons who had inflicted injuries on the deceased were aware about the vital organs of human body, which can cause death instantaneously and the possibility of petitioner having such knowledge cannot be ruled out as he was working in GTP hospital as a sweeper and had worked in various departments of GTB Hospital (vii) during investigation clothes, shoes with blood stains on them and one mobile phone were also recovered at the instance of the present petitioner (viii) the blood-stained clothes and shoes which were recovered were sent to FSL for examination. As per the FSL report of the Blood DNA profiling, the DNA of the blood of the deceased persons was found matching with the recovered blood-stained clothes and shoes of the petitioner and other accused persons.

31. On the basis of aforesaid circumstances *prima facie* there appears to be a reasonable ground to believe that the petitioner had committed the offence. That apart, there is allegation that family members of the accused persons were threatening the main witnesses and surviving member of the



deceased's family and in this regard FIR No. 310/2018 u/s 341/195A/506/34 IPC has also been registered at PS Crime Branch, Delhi.

32. Further, it goes without saying that more severe the punishment, the stronger is a possibility of an accused absconding or fleeing from justice if enlarged on bail. Thus, having regard to the nature of accusation and the punishment prescribed for the offences with which the petitioner is charged in the present case, there is every danger that the petitioner will abscond and may not be available to stand trial if released on bail.

33. There is also no merit in the submission of the learned counsel for the petitioner that since the petitioner has been incarcerated for longer duration, he may be released on bail. This Court is of the view that in the cases of serious nature especially involving multiple homicides, the duration of accused's incarceration is inconsequential. A balance needs to be struck between the "right to individual liberty" and "societal interest". Reference in this regard may be had to the observations of the Supreme Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan; (2004) 7 SCC 528***, the relevant paragraph of which reads as under:

14. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the



offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.

(Emphasis supplied)

34. In the facts of the present case, grant of bail to the petitioner, accused of multiple murders, at this stage when there is a possibility of petitioner absconding and there are allegations against the petitioner of threatening the witnesses, is not in the best interest of the society. The egregious nature of multiple homicides thus, warrants dismissal of bail plea of the petitioner to safeguard societal interest and to ensure safety of the witnesses and their family members.

35. The petition stands disposed of.

36. Order be uploaded on the website of the Court.

37. Order dasti under signatures of the Court Master.

VIKAS MAHAJAN, J.

JULY 09, 2024

N.S. ASWAL