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

+ **BAIL APPLN. 1566/2023**

AJAY SINGH RAGHAV

..... Petitioner

Through: Mr. B.S. Choudhary, Ms. Sneha Lata
Rana, Mr. Manish Kumar and Mr.
Sagar Choudhary, Advocates.

versus

STATE (NCT) OF DELHI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for the
State with Insp. Gyan Prakash, P.S.
Kotwali.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER
16.05.2024

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1. The present application has been filed under Section 439 of Cr.P.C seeking regular bail in connection with the FIR No.183/2019, under Sections, 302/201 of IPC, registered at Police Station Kotwali.
2. The case of the prosecution is that the accused had given a loan of Rs.1 lakh to his friend/deceased namely Deepak at the time of his marriage. Later on when the accused requested the deceased to return the said loan amount, the deceased kept on delaying on some pretext or the other. On 07.06.2019, heated arguments took place between the accused/petitioner and the deceased. The petitioner inflicted injury on the head of the deceased and strangulated him in his car, thereafter dumped the dead body in the area of PS Kotwali.



3. Learned counsel for the petitioner submits that the present case is based on circumstantial evidence. He also submits that two witnesses i.e. PW-3 and PW-4 who have been cited by the prosecution to prove the motive did not support the case of the prosecution and turned hostile. He submits that in so far as recovery of mobile phone of the deceased at the instance of present petitioner is concerned, the same is planted, inasmuch as, no public witness joined at the time of said recovery.

4. He submits that the petitioner is in custody since 12.06.2019 and has now been incarcerated for more than 03 years. In support of his contention, the learned counsel has invited the attention of the Court to the nominal roll.

5. He further submits that the prosecution has cited 38 witnesses and till date only 12 witness have been examined and the conclusion of trial is going to take a long time. Thus, he urges the Court to enlarge the petitioner on bail.

6. *Per contra* the learned APP has argued on the lines of the status report.

7. He submits that the recovery of the mobile phone of the deceased is at the instance of the petitioner and even the cloth which was used by the petitioner to clean the blood stains was also recovered at the instance of the petitioner. He refers to the testimony of Vijay, cousin of the deceased who was examined as PW-7 to contend that said witness had sent a message on the mobile phone of the deceased inquiring about his whereabouts and in response a message was received demanding some ransom amount. He further submits that ATM and Aadhar cards of the deceased were also recovered at the instance of the petitioner.

8. I have heard learned counsel for the petitioner as well as learned APP



for the State and perused the record.

9. It is not in dispute that PW-3 and PW-4, the witnesses who were cited by the prosecution to prove the motive have not supported case of the prosecution. Needless to say that in a case based on the circumstantial evidence motive is an important aspect.

10. In so far as the recovery of mobile phone and other things are concerned, the same is admittedly not witnessed by any independent witness. Even otherwise, recovery is only a corroborative piece of evidence and conviction cannot be based solely on the basis of recovery.

11. The petitioner is stated to be in custody for the last more than 03 years. His custody is evidently not required as the investigation is complete and the trial is underway and the material witnesses have been examined.

12. The prosecution has cited 38 witnesses out of which only 12 witnesses have been examined, evidently the trial is going to be a protracted one. In the facts and circumstances of the present case, the petitioner cannot be kept in custody for indefinite period to await outcome of the trial when at this stage there is presumption of innocence in his favour.

13. The petitioner does not have any criminal record nor it is the case of the prosecution that the petitioner is a flight risk.

14. Considering the aforesaid circumstances in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 20,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-



a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.

b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.

c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the child victim or other witnesses.

15. The petition stands disposed of.

16. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.

17. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.

18. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

15. Order *dasti* under signatures of the Court Master.

16. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MAY 16, 2024/MR