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

+ **BAIL APPLN. 1190/2024**

SUNIL @ RABBAN

.....Petitioner

Through: Mr. Raj Kumar and Mr. Md. Irfan,
Advts.

versus

STATE

.....Respondent

Through: Mr. Aman Usman, APP for the State
with SI Shiv Dayal Kumar, PS Harsh
Vihar.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

18.07.2024

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1. This petition has been filed seeking regular bail in FIR No.62/2017 PS Harsh Vihar under Sections 302/307/120B/34 IPC and Sections 25/27/54/59 of the Arms Act. The petitioner has been in custody since March 2017. The Nominal Roll, does not record any previous involvements. No interim bail has been sought by the petitioner till date.
2. As per the case of the prosecution, the petitioner/accused was hired by Babita, wife of the deceased for killing her husband. On 01st March, 2017, information was received that a person has shot with the bullet. The injured was taken to the hospital but was declared as brought dead. No eye witnesses were found in the hospital.
3. The PCR received a call on 09th March, 2017 by one Brij Bhushan Shukla stating he was having illicit relationship with Babita. As per him, Babita had told him that she had murdered Ompal, the deceased, with the help



of the petitioner and, therefore, he became nervous and spoke to the police. The case of prosecution is mostly based on this disclosure statement of Brij Bhushan Shukla and that of Babita.

4. Counsel for the petitioner has also pointed out to the fact that out of 36 witnesses, 25 witnesses have been examined. The APP for the State confirms on instructions of the IO that only official witnesses are left to be examined.

5. Co-accused Babita, on whose instructions allegedly the deceased was shot is already on bail by order dated 31st March, 2018 of the Trial Court. The other co-accused Mamta has been discharged.

6. APP for the State submits that they rely upon gun-shot residue which was recovered from petitioner that matched as well as chance finger print on the *katta*.

7. Counsel for petitioner however points out to the evidence of PW-16, the IO, who states that the country-made pistol was recovered at the spot and the pistol and bullets were given by public persons and were thereafter put in a polythene bag. On this basis, he states it is quite unlikely that chance finger prints could be obtained. The basis, on which the prosecution has mounted this case, is unsustainable, he contends.

8. In these facts and circumstances, considering that the petitioner has been in custody for more than 7 years, the trial is yet to proceed with respect to the official witnesses, the material witnesses having been examined, and the petitioner has raised reasonable doubts in the case of the prosecution, as also there is no previous involvement and he has not sought any liberty so far, in the opinion of this Court, the petitioner cannot be kept in custody indefinitely.

9. In light of the above, and that the trial in the matter is likely to take



some time, it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner will mark presence physically before the concerned I.O. every alternate Friday at 4 p.m., and will be not kept waiting for an unreasonable time.
- vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the



complainant/victim's family or tamper with the evidence of the case.

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

11. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

12. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

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

ANISH DAYAL, J

JULY 18, 2024/MK