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

+ BAIL APPLN. 1199/2024
MOHD HASEEB

..... Applicant

Through: Mr. Gafraj Singh, Ms.
Sakshi Sachdeva, Mr.
Aditya Atri & Ms. Ritika
Rajput, Advs.

versus

THE STATE (GOVT. OF NCT
OF DELHI)

..... Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with Mr.
Harsh Mor, Ms. Harsha
Garg, Ms. Sukriti Kapoor
& Ms. Prerna Chaudhary,
Advs.
Inspector Kishore Kumar
& Inspector Vipin Kumar,
PS- Vasant Kunj

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

28.05.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of regular bail in FIR No. 412/2021 dated 01.11.2021, for offences under Sections 302/34 of the Indian Penal Code, 1860 ('IPC') and Section 27 of the Arms Act, 1959, registered at Police Station Vasant Kunj North. Chargesheet has been filed against the applicant under Sections 302/120B/34 of the IPC and Section 27 of the Arms Act, 1959.

2. It is alleged that on 31.10.2021, a plan was hatched to murder Krishnapal Sehrawat/deceased due to a dispute over hotel



rent and electricity bills between co-accused Roshan Mishra and deceased Krishnapal Sehrawat. It is alleged that co-accused Roshan Mishra conspired with co-accused Dilshad Ali and offered him ₹2,00,000/- for the murder of Krishnapal Sehrawat. It is alleged that co-accused Dilshad Ali enlisted the help of co-accused Bullu Prasad@Golu, Patel@ Kala, Avinash@ Lalu, Guddu Sheikh, Alok Rai, and the present applicant to execute the murder.

3. It is alleged that on 01.11.2021, at around 12:30 A.M., the accused persons executed their plan and murdered Krishnapal Sehrawat. It is alleged that the applicant acted as a lookout, keeping an eye on the street while the others went inside the hotel.

4. On 05.11.2021, the applicant was arrested based on the disclosure statement of co-accused Guddu Sheikh.

5. The applicant moved an application seeking regular bail before the learned Trial Court and the same was dismissed *vide* order dated 05.03.2024.

6. The learned counsel for the applicant submits that the applicant is an innocent young man, having no nexus with the commission of the alleged offence, and submits that he has been falsely implicated by the investigation agency.

7. She submits that it is an admitted case of the prosecution that the applicant did not actively participate in the commission of the alleged offence. The role of causing gunshot injuries to the deceased is attributed to co-accused Bullu Prasad *alias* Golu.

8. She submits that the CCTV footage of the place of the alleged incident does not show the presence of the applicant at the relevant time. She submits that from a bare perusal of the CCTV footage, it is clear that the applicant has been falsely



implicated in the present case due to his association with co-accused Guddu Sheikh.

9. She submits that the investigating officer did not collect the CDR of the mobile number of the applicant to prove his presence at the alleged place of incident. She submits that withholding the best available evidence by the investigation officer clearly shows manipulation.

10. She submits that the only material available on record against the applicant are the statements of PW-3 Kashir Alam recorded under section 161 of the CrPC on 01.11.2021 and 05.11.2021, wherein he identified the applicant as one of the persons who came to the alleged spot. She submits that PW-3 Kashir Alam has not supported the prosecution's case and has turned hostile in his testimony/evidence recorded before the learned Trial Court.

11. She submits that the investigation regarding the applicant has already been completed, and he is no longer required for further investigation. She submits that material witnesses have already been examined.

12. *Per contra*, the Additional Public Prosecutor for the State opposed the bail application. He submits that the applicant actively participated in the alleged murder. He submits that the applicant was identified by the eyewitness of the case at the time of arrest. He submits that, if bail is granted, the applicant may adversely influence the witness.

13. I have heard the learned counsel for the parties.

14. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; the nature



and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

15. However, prolonged incarceration as an undertrial militates against the right to life and personal liberty guaranteed under Article 21 of the Constitution, and is also a factor which has to be kept in mind at the time of deciding the question of grant or refusal of bail.

16. In the present matter, the prosecution has not alleged that the applicant inflicted the fatal injuries upon the deceased or possessed any arms for this purpose.

17. It is also pertinent to note that the alleged eyewitness namely, Kashir Alam has not identified the applicant. He has stated during his examination before the learned Trial Court that the applicant was not the one who had to come to the hotel at the time of the incident and was also not seen sitting in the vehicle.

18. As per the prosecution, the CCTV footage which has been recovered from outside the hotel, four persons were seen at the relevant time, going inside the hotel where deceased was shot.

19. It is not denied that the applicant does not appear to be one of the four persons. Those four persons have been identified to be other co-accused persons including the co-accused, Guddu Sheikh, on whose disclosure, the present applicant was arrested.

20. The allegation against the co-accused Guddu Sheikh and other co-accused persons are that they were hired by the accused, Roshan Kumar to murder the deceased.

21. The applicant is in custody since 05.11.2021. Since the chargesheet in the present case has been filed, the custody may itself result in the denial of his fundamental right to life and



personal liberty guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in near future.

22. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeeb*** : AIR 2021 SC 712 held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

23. The investigation in the present case already stands concluded with the filing of chargesheet followed by framing of charges by the learned Trial Court. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

24. Considering the aforesaid discussion, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the boundaries of the country without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;



- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

25. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

26. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

27. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 28, 2024

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