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

+ BAIL APPLN. 1585/2023

RAJAN

..... Applicant

Through: Mr. Vineet Jain, Adv.

versus

STATE GNCT OF DELHI

..... Respondent

Through: Mr. Utkarash, APP for the
State with SI Ankur
Kardam, PS Tilak Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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26.02.2024

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') for grant of regular bail in FIR No. 430/2016 dated 28.04.2016 under Sections 302 of the Indian Penal Code, 1860 ('IPC') registered at Police Station Tilak Nagar.

2. The present FIR was registered at the behest of the complainant, Jyoti, who alleged that on 27.04.2016, at around 08:00 p.m., while she was going to the park with her sister along with her children, she was informed by a neighbour who was a scrap dealer that her brother, Yogesh @ Raju, was lying unconscious behind the CRPF camp. On being informed, she went to that place with her neighbour and found that Yogesh was lying unconsciously soaked in blood. Thereafter, while she was informing her family members, a PCR came at the spot and took Yogesh to DDU Hospital and he was declared 'brought dead', this led to registration of the present FIR.

3. The present applicant was arrested on 29.04.2016 at the behest of two alleged public witnesses, namely, Sunny @ Chhidi



and Anil Kumar, who stated that the applicant had beaten the deceased and had given him stab injury on his neck and abdomen.

4. The charge sheet in the present case has been filed under Sections 302/34 of the IPC, *qua* the applicant and, subsequently, charges have also been framed.

5. The learned counsel appearing on behalf of the applicant submits that the applicant has been in incarceration since 29.04.2016, that is, for more than seven years apart from concession of interim bail which was granted to him twice as per the HPC guidelines. He submits that the investigation in the present case is complete and no purposes would be served by keeping the applicant in further custody.

6. There are no chances of tampering with the evidence as the investigation is already over and the trial is also not likely to be completed in the near future.

7. The learned counsel for the applicant submits that the only role which can be attributed to the present applicant is that he gave fist blows to the deceased which is further corroborated by the statement of two public eye witnesses, who have turned hostile in their examination before the learned Trial Court and failed to identify the applicant. He submits that the applicant has deep roots in the society and has no past antecedents.

8. He further submits that the applicant has never misused the bail earlier granted to him.

9. *Per contra*, the learned Additional Public Prosecutor for the State opposes the grant of bail to the applicant on the ground that the applicant had an active role in the commission of offence in the present case as is also evidenced by the CCTV footage wherein the applicant can be seen beating the deceased along



with other co-accused.

Conclusion

10. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee : (2010) 14 SCC 496***, the Hon'ble Supreme Court laid down the parameters for granting or refusing the grant of bail which are as under:

- “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, behavior, 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.”*

11. It is the Constitutional duty of the Court to ensure that there is no arbitrary deprivation of personal liberty. Bail is the rule and jail is the exception, and Courts must exercise their jurisdiction to uphold the tenets of personal liberty, subject to rightful regulation of the same by validly enacted legislation. The Hon'ble Supreme Court has time and again held that Courts need to be alive to both ends of the spectrum, i.e. the duty of the Courts to ensure proper enforcement of criminal law, and the duty of the Courts to ensure that the law does not become a tool for targeted harassment.

12. The applicant was arrested on a statement given by the witnesses, Sunny and Anil Kumar. It is alleged that the said two witnesses are the eye witnesses and have seen the applicant giving stab injury to the deceased. The examination of the said eye witnesses has already taken place and they have failed to



identify the applicant as the alleged assailant. They have also stated that no statement was given to the prosecution on an earlier occasion.

13. Clearly, the eye witnesses have turned hostile. It is settled law that the statement of a witness is only a piece of evidence, and for the purpose of conviction, the corroborated part of the evidence of a hostile witness regarding the commission of the offence can be treated as admissible. [Ref. ***Mrinal Das v. State of Tripura* : (2011) 9 SCC 479**]. The Trial Court while deciding the case has to consider the entire material on record, and can definitely look into the circumstances and other evidence put forth by the prosecution while passing the judgment. However, at the stage of considering the bail application, the same cannot be ignored especially when the applicant is in custody for more than eighty four months.

14. *Prima facie* a perusal of the material on record reveals that the sole evidence that is available at this juncture against the applicant is his presence in the CCTV footage whereby he is seen beating the deceased along with other co-accused. The alleged footage does not reveal that the applicant had given a stab injury on the neck and abdomen of the deceased. The same does not, at this stage, form basis for the allegation of murder which was alleged on a statement that the applicant had given a stab injury to the deceased. The authenticity of all of these materials is to be tested during the course of trial and cannot form the basis for the prolonged incarceration of the applicant.

15. The Hon'ble Supreme Court in the case of ***Union of India v. K.A. Najeel* : Criminal Appeal No. 98 of 2021**, upheld the grant of bail to the accused for offences under Unlawful Activities (Prevention) Act, 1967 on the ground that although the



charges against the accused were grave and severe, however the length of the period spent in custody and the unlikelihood of the trial concluding soon outweighed the seriousness of the charges. The relevant portion reads as under:

"19. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

16. The charge sheet has already been filed in the present case and only 15 out of 30 witnesses have been examined and, therefore, the trial is not likely to be completed in the near future. This Court is of the opinion that it would not be prudent to keep the applicant in further incarceration at this stage.

17. Considering the totality of the facts as discussed above, there are reasonable grounds to believe that the applicant has not committed the alleged offence. The prime witnesses have already been examined and thus, there cannot be any apprehension of any witnesses being influenced. The likelihood of the applicant absconding or fleeing, can be taken care of by putting appropriate conditions.

18. Considering the above, the applicant is directed to be released on bail in FIR No.430/2016 on furnishing a personal bond in the sum of ₹30,000/- with two sureties of the like amount, one of whom specifically being in the blood relation of the applicant, subject to the satisfaction of the learned Trial



Court/ Duty MM/ Link MM, on the following conditions:

- a. He 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. He shall under no circumstance leave the boundaries of the National Capital Region without the permission of the Trial Court;
- c. He shall appear before the learned Trial Court as and when directed;
- d. He 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. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

19. 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 appropriate application for cancellation of bail.

20. It is clarified that the 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. The said observations should not be taken as an expression of opinion on the merits of the case.

21. The present application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

FEBRUARY 26, 2024/“SS”/UG/KDK