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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1218/2024

RAJA

..... Applicant

Through: Mr.Ravi Kumar Sharma,
Ms.Anjani Kunal Rai,
Ms.Sachin Dubey, Ms.Priyanka
Singh, Advs.

versus

THE STATE, GOVT. OF NCT OF DELHI Respondent

Through: Ms.Priyanka Dalal, APP with
Insp. Varun Dalal and Insp. Net
Ram.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

16.05.2024

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1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for grant of bail in FIR no.883/2022, registered at Police Station Jahangir Puri, for offence under Sections 302/34 of the Indian Penal Code, 1860 (in short, 'IPC'). Later in the chargesheet Sections 120B/201 of the IPC have also been added.
2. It is the case of the prosecution that on 29.08.2022, a PCR call was received, which was recorded as DD no.15A at Police Station Jahangir Puri, Delhi regarding one boy being stabbed at K-Block, Mother Diary, Jahangir Puri. On reaching the spot, a pool of blood was found present in front of Hanuman Mandir, K-Block Jhuggi, behind ITI Jahangir Puri. The deceased was



brought dead at BJRM Hospital, Jahangir Puri, New Delhi. Thereafter, the statement of the eyewitness Neha was recorded. She has alleged that four boys had entered her *jhuggi* and assaulted the deceased. She is alleged to have identified two of the co-accused, Banta and Rana, who she stated also had knives in their hands. She also stated that though she does not know the other two boys, she can recognize them if shown to her.

3. The prosecution alleges that during investigation, a CCTV footage of the camera installed near the house of the co-accused Birju @ Banta was analyzed and it was found that the accused Birju @ Banta, the applicant herein, and the other co-accused, Chandan, came together to the house of Birju @ Banta at about 3.00 am on 29.08.2022 after committing the alleged crime. It is alleged that Deepak Nanda, a neighbour of Birju @ Banta has also stated that he saw the three boys coming back to the house of Birju @ Banta and at that time, Birju @ Banta was having blood stains on his clothes and was also injured.
4. It is stated that Neha after seeing the aforesaid CCTV footage identified *inter alia* the applicant herein as one of the unknown persons who had caused injuries to the deceased.
5. It is stated that the proceedings under Section 82 of the Cr.P.C. have been initiated against the co-accused Ravi@ Rana and Chandan. Later, Ravi @ Rana was arrested on 18.04.2024. It is stated that the main eyewitness-Neha has been partially examined.
6. The learned counsel for the applicant submits that the



eyewitness-Neha in her testimony before the learned Trial Court has stated that she cannot identify the assailants. He submits that therefore, there is no evidence against the applicant. He submits that the applicant has been in custody since 30.08.2022 and the trial is likely to take long.

7. On the other hand, the learned APP submits that the statement of Neha is only partially recorded before the learned Trial Court. She submits that there is another witness that is, Deepak Nanda, who had seen the co-accused Birju @ Banta along with the other boys coming to the house of the co-accused with Birju @ Banta wearing blood stained clothes and also having an injury. She submits that there is every likelihood that in case the applicant is released on bail, he shall influence the witnesses. She further submits that one co-accused is also absconding and the other has been apprehended only after much effort and after initiation of proceedings under Section 82 of the Cr.P.C. She submits that there is also every likelihood of the applicant absconding if he is released on bail. She submits that the applicant can be clearly seen in CCTV footage which has been retrieved from near the house of Birju @ Banta.
8. I have considered the submissions made by the learned counsels for the parties.
9. The Supreme Court in *Anil Kumar Yadav v. State (NCT of Delhi)*, (2018) 12 SCC 129, laid down the principles that must be kept in mind by a Court while considering an application under Section 439 of the Cr.P.C., which reads as under:



“17. While granting bail, the relevant considerations are : (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.

18. While considering the basic requirements for grant of bail, in State of U.P. v. Amarmani Tripathi (2005) 8 SCC 21 , this Court has held as under : (SCC p. 31, para 18)

“18. It is well settled that the matters to be considered in 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 charge; (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 tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [Prahlaad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280] and [Gurcharan Singh v. State (NCT of Delhi), (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert



justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC] : (SCC pp. 535-36, para 11)

‘11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598] and [Puran v. Rambilas, (2001) 6 SCC 338)’”

19. *The test to be applied for grant of bail was also considered in [Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13] ,*



wherein it was held as under : (SCC pp. 21-22, para 16)

“16. ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in [State v. Jagjit Singh, (1962) 3 SCR 622] and [Gurcharan Singh v. State (NCT of Delhi), (1978) 1 SCC 118] and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.”

10. As is evident from the case of the prosecution, the accused are alleged to have brutally murdered the deceased. One of the accused, according to prosecution, was the applicant herein. The applicant has been charged *inter alia* on the basis of the CCTV footage recovered from near the house of co-accused Birju @ Banta. It is further the case of the prosecution that the applicant had come to the house of the co-accused Birju @ Banta after committing the alleged offence and Birju @ Banta was seen wearing the blood stained clothes and also had injuries. According to the prosecution, there is also an eyewitness to corroborate this allegation, and the said witness is yet to be examined. Examination of Neha is also not complete. As has been contended, one of the co-accused is absconding, while other



has been apprehended after much effort.

11. Keeping in view the above principles applicable to an application under Section 439 Cr.P.C., and the facts of the present case, the applicant has, therefore, not been able to make out a case for being released on bail at this stage.
12. Needless to state, any observation touching upon 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 the merits of the matter.
13. Accordingly, the application is dismissed.

NAVIN CHAWLA, J

MAY 16, 2024

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[Click here to check corrigendum, if any](#)