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

+ **BAIL APPLN. 1219/2024 CRL.M.A. 23466/2024**

HITESH PRATAP SINGH CHAUHANPetitioner

Through: Mr. Kanhaiya Singhal, Mr. Ujwal
Ghai, Mr. Udit Bakshi, Ms. Vani
Singhal, Mr. Prasanna, Mr. Ajay
Kumar, Ms. Deepali Panwar, Mr.
Aaditya Sara, Advocates

versus

STATE NCT OF DELHIRespondent

Through: Mr. Amit Ahlawat, App for the State.
Inspector Mahinder Lal,
AHTU/Crime Branch
Mr. Rajiv Mohan, Mr. Sachit Sharma,
Advocates for Complainant.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
14.10.2024

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1. This petition has been filed seeking regular bail in FIR No. 216/19 PS Greater Kailash-1, Delhi under Sections 364/302/201/120B/34 of IPC. The petitioner was arrested on 04th December 2019.
2. As per the nominal roll, petitioner has already been in custody for approximately 4 years and 5 months.
3. Petitioner was granted interim bail once in 2021, thrice in 2022, and once in 2024. On each occasion, petitioner surrendered on time and did not misuse his liberty.



4. Counsel for the petitioner points out a previous order dated 24th April 2023, whereby this Court dismissed the petitioner's bail application, observing that, *at that stage*, while the trial was ongoing, it could be said that there was no *prima facie* evidence of the petitioner's previous involvement in the case. The bail application was dismissed *at that stage of the trial*.

5. Counsel for the petitioner submits that since the passing of the aforesaid order, material witnesses have all been examined, and petitioner having been in custody for 4 ½ years, has not misused his liberty during interim bail.

6. Counsel for the petitioner further states that the previous decision of this Court was based upon the circumstantial evidence relating to the recovery of a SIM card bearing No. 9873685044, which was recovered at the instance of petitioner. Counsel submits that subsequently, PW-6 and PW-7 have been examined, and he relies on their testimony to create dent in the case of the prosecution.

7. It is submitted that the testimony of PW-6 (retired ASI Rajbir Singh) and PW-7 (SI Satbir), reveals that they had first gone to the house of co-accused Sahil, then to the residences of one Priyank Khanna and Amit Vikram and *subsequently* went to the house of Rishi Raj Pal Singh Chauhan and Hitesh Pratap Singh Chauhan, the petitioner.

8. As per the chargesheet, it is stated that on 04th December 2019, the petitioner, along with his father, Rishi Raj Pal Singh Chauhan, was summoned to the office of AHTU for investigation, where they disclosed the roles of co-accused Sahil, Priyank Khanna, and Amit Vikram Chhabra.

9. Counsel submits that the testimony of PW-6 and PW-7 is inconsistent



with what was stated in the chargesheet relating to the sequence of the events.

10. Regarding the recovery of the SIM card, counsel for petitioner contends that in the cross-examination of PW-6, it was stated that when the petitioner and his father were brought to the Police Station, their mobile phones were not checked and were not taken in possession and had allowed the petitioner and his father to take the mobile phones back.

11. In response to these submissions, Status Report has been requisitioned. As per the Status Report, on 04th December, 2019, a Samsung Phone with a SIM card no. 9310088642, was recovered from the petitioner upon arrest and the SIM card was registered in his name.

12. However, the suspect SIM card No. 9873685044 was recovered from the petitioner's house only on 09th December 2019, while he was on PC Remand.

13. Though the Status Report notes that there were 1479 calls made between 02nd January 2019 and 16th November 2019 using the suspect SIM card No. 9873685044, and these calls were made to phones used by Amet Vikram Chhabra, petitioner's counsel points out that it cannot be stated with certainty that the said number was being used by petitioner and not by his father.

14. Counsel for the petitioner categorically states that he differentiates the case from his father since it was a case of joint recovery at best and nothing which has come on record would show that the suspect SIM was being used by the petitioner rather than the father.

15. Aside from that, it is contended that no other recovery has been made at petitioner's behest, and the case against him is based merely on



circumstantial evidence.

16. Petitioner is not visible in any CCTV footage, the Forensic Report as regards the CCTV footage, is also now on record before the Trial Court. As regards the phone communication, the voice samples have been taken of the petitioner's father and Amet Vikram Chhabra, and not of petitioner.

17. APP however refutes these contentions stating that the suspect SIM was recovered at the behest of the petitioner and that the chain of circumstantial evidence is cogent and robust in this case of a murder through contract killing, allegedly organised by the petitioner and his father.

18. As per the Status Report, the suspect SIM was revealed through the phone of Chetan Chauhan, brother of the petitioner and where it was stored as "*Daddy*." Therefore, the petitioner's counsel states that it becomes quite clear that the phone was being used by Rishi Raj Pal Singh Chauhan, the father of the petitioner and Chetan Chauhan.

19. Having considered the contentions of the parties, and having perused the Status Report as well as the previous decision of this Court dated 24th May 2023 and judgment dated 02nd April 2024 granting bail to co-accused to Harsh Chhabra, in Bail Application no. 3689/2022, this Court is of the view that continued custody of petitioner may not be necessary, more so, since the material witnesses have been examined and the trial will take some time to conclude. Moreover, the petitioner has been on interim bail at least on five occasions, in the meantime and has not misused his liberty, and has no previous involvements.

20. It is highlighted by the counsel for the petitioner that his case is different from the case of his father Rishi Raj Pal Singh Chauhan. His contentions have been appreciated specifically in that context.



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

22. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 50,000/- 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 first and third Thursday of every month at 4 p.m., and will be not kept waiting for more than an hour.
- 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.

23. 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.

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

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

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

ANISH DAYAL, J

OCTOBER 14, 2024/sp/tk