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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1635/2023&CRL.M.A. 12635/2024**
HANSRAJPetitioner

Through: Mr Ravi Drall and Ms Aditi,
Advocates.

versus

THE STATE OF NCT DELHIRespondent

Through: Mr. Aman Usman, APP for the State
with SI Chandan& PSI Harish,
PS Paschim Vihar East.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
12.07.2024

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1. This petition is filed seeking regular bail in FIR No.296/2016, P.S.Paschim Vihar, U.S: 302/392/411/120-B/34 IPC. Petitioner has been incarcerated since 10th July 2016, the FIR being registered on 7th July 2026. For a brief period during COVID-19 pandemic, petitioner was out on interim bail but had duly surrendered and did not misuse the liberty.

2. It is apparent from the earlier order sheets of this Court that testimony of PW-39, the IO could not be completed for many dates as the IO did not present himself or otherwise took adjournments on various counts. It is also apparent from copies of order sheets which have been filed.

3. It transpires that the testimony of PW-39 has now been duly documented. Further, all material witnesses have been examined. The trial is still to proceed considering that one of the co-accused, who was declared PO, has now been arrested and process in that regard has to start.



4. Counsel for petitioner points out that petitioner was not seen in the CCTV footage and he was arrested purely on disclosure of co-accused. The co-accused, Dheeraj who has been implicated in the matter, was engaged as a driver by petitioner for one of his two Maruti cabs, which the petitioner operates. The cab which was driven by Dheeraj used to ferry children to Heritage School, Rohini. This is in context of the fact that CDR records have been relied upon by the prosecution to show that petitioner and other accused were in touch a day prior to the incident and there are various calls between them otherwise.

5. Counsel for petitioner points out that the reason for being in touch with Dheeraj is evident since he was driving his Maruti car. On the day of the incident, the car had been given to the mechanic for oil replacement and when petitioner enquired, he was told that Dheeraj had taken it away.

6. As per the case of the prosecution, this car was used in facilitation of the commission of offence. The other implicating circumstance is recovery of Rs. 2 lakhs from a property, allegedly at the behest of the petitioner. However, counsel for petitioner states that the owner of the property, Mr. Bharat Bhushan, has stated in evidence that there was no recovery from the property and even otherwise, there is no independent witness to the recovery.

7. Petitioner's counsel states that he intends to lead evidence in defence properly, in these circumstances, since various documents have not been shown to the court by the prosecution.

8. APP for the State has refuted these contentions and states that a day before the date of incident, all four co-accused were in touch with each other and their location is of area where the incident occurred. Besides that, there is recovery of Rs.2 lakhs which was part of amount looted from the deceased. Further, he states that there is an inherent contradiction in the plea that on the



date of incident, the car was taken by petitioner since he could be either with Dheeraj or with the car in question. This will also be a subject matter of Section 315 Cr.P.C. proceedings.

9. It may be apposite to refer to the decision in ***Javed Gulam Nabi Shaikh v. State of Maharashtra AndAnr***, CrI.A. 2787/2024 where, in similar circumstances, accused was under trial for 4 years and charges had not yet been framed, the Supreme Court made certain observations which are extracted as under:

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

(emphasis added)

10. In these facts and circumstances, considering that there are



circumstances on which petitioner can rely upon to prove his innocence, which will be considered during trial through defence evidence.

11. Petitioner has been in custody for a long period of 8 years (except for 2 years on bail during COVID-19 pandemic when he was out on interim bail in light of HPC guidelines and did not misuse his liberty).

12. In light of the above, in the opinion of this Court, considering the submissions recorded above, 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 a permanent address to the Trial Court. 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 the 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 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.

13. Needless to state, 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.

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

15. Accordingly, the petition is disposed of. Pending application is disposed of as infructuous.

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

ANISH DAYAL, J

JULY 12, 2024/sm