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

+ **BAIL APPLN. 1744/2023**

GIRI CHAND @ BANTI

..... Petitioner

Through: Mr.Kanhaiya Singh,
Mr.Ujwal Ghai, Ms.Vani
Singhal Prasanna, Mr.Teeksh
Singhal, Mr.Ajay Kumar,
Mr.Anmol Chopra, Mr.Udit
Bakshi, Ms.Deepali Pawar,
Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.Aman Usman, APP with SI
Suresh Kumar

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
26.02.2024

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1. This application has been filed under Section 439 of the Code of Criminal Procedure (in short, 'Cr.P.C.') praying for the applicant to be released on bail in FIR No.0508/2018, registered with Police Station: New Usmanpur, North-East District, Delhi under Sections 302/201 of the Indian Penal Code (in short, 'IPC').
2. It is the case of the prosecution that on 01.07.2018, at about 06:09 AM, an information was received, which was recorded vide DD no.19-B, regarding a dead body of a female being found near the main gate of the DDA Park (Shastri park) opposite Rajkiya Sarvodaya Vidyalaya, Shastri Park, Delhi. On receipt of the said information, the Investigating Officer (IO) Inspector



Vijay Kumar was assigned to reach at the spot. The abovementioned FIR was registered on the recovery of the body.

3. The said body was recognized as that of the deceased (name withheld) by the sisters of the deceased. The sisters of the deceased raised a suspicion on the deceased's husband and on the applicant, who was her lawyer and had contested her matrimonial cases before the Court.
4. On analyzing the CDRs of the mobile phone of the deceased, it was found that the last call was made from her phone to the phone of the applicant at 12.09 PM on 30.06.2018. There were other phone calls also that had been exchanged between the parties from 12.05.2018 to 30.06.2018. It was further revealed that the deceased had hired a TSR which dropped the deceased near the Metro Station Shahdara at about 12.50 P.M.
5. The prosecution alleges that the deceased, on 30.06.2018, at around 1.15 PM, had made a phone call from mobile phone of PW-1 to the applicant. It is further the case of the prosecution that during investigation, it was revealed that the applicant was her lawyer who earlier had represented the deceased in her matrimonial cases. Later, as the deceased was planning to move back to her husband, the applicant did not like it and had a dispute with the deceased. The deceased had also got lodged an FIR, being FIR No.328/2017 at Police Station: Anand Vihar, under Section 323/341 of the IPC. Later on, Sections 506 and 509 of the IPC were also added in the said FIR. This also shows the motive of the applicant to commit the crime alleged of.



6. As far as the evidence is concerned, the prosecution alleges that from the wooden almirah of the applicant, the Aadhaar card, passport, and Election ID Card of the deceased were recovered.
7. The prosecution further alleges that on inspection of the car, which belongs to the applicant, blood samples were recovered on 28.08.2018, which as per the FSL report dated 23.10.2018, matches with the DNA profile of the deceased.
8. The prosecution further alleges that as per the CDR location of the applicant, it shows that the applicant was also in the vicinity of the same place where the body of the deceased was found.
9. Based on the above circumstantial evidence, the applicant has been charged of the offence under Sections 302/201 of the IPC.
10. The learned counsel for the applicant submits that merely because the CDRs of the mobile location of the applicant is found in the vicinity of the place where the dead body is allegedly recovered, cannot be an evidence against the applicant. The applicant is the resident of that same area where the dead body of the deceased was found and therefore, it would not be unusual for the CDRs to be showing such location of the applicant.
11. He further submits that, in fact, the other CDRs analysis conducted by the prosecution would show that the conduct of the applicant around the time of the alleged incident was normal inasmuch as, he was interacting with various other persons in a normal course of business.
12. He further submits that as far as the alleged recovery of blood



stains from the car of the applicant is concerned, there are serious doubts on the same inasmuch as, the application seeking assistance of FSL was made much prior to the date of search. The blood samples were collected on 28.08.2018, whereas the report was prepared only on 23.10.2018, that is, after much delay. The FSL report itself states that the exhibits on collection were handed over to the IO to be later forwarded to the FSL. PW-10, Manish Gupta, Jr. Forensic Chemical Examiner (JFCE), Biology, FSL, Madhuban Chowk, Delhi, in his statement recorded on 28.07.2023, has *inter alia* admitted that no document was signed by him or by any of his team members and the exhibits lifted by him from the car were not converted into any parcel or sealed with the seal of the FSL or his seal.

13. The learned counsel for the applicant submits that therefore, there is a serious doubt on the chain of custody of the samples so collected, including on whether they were lifted at all or not. He submits that there are other glaring inconsistencies in the statement of PW-10 as well.
14. Placing reliance on the judgment of the Supreme Court in ***Rahul v. State (NCT of Delhi)***, (2023) 1 SCC 83, he submits that where there is a doubt on the chain of custody of the samples allegedly collected, the benefit of the same has to be given to the applicant. In support, he also places reliance on the judgment of this Court in ***Kasif v. State (NCT of Delhi)***, 2018 SCC OnLine Del 9768.
15. He further submits that the applicant is a practicing Advocate and has already undergone custody of a period of more than three



years; the case is pending trial since 2018 and out of 44 witnesses only 14 have been examined so far. He submits that the applicant was earlier released on *interim* bail from 09.09.2020 to 22.03.2021 and thereafter, on 13.05.2021 to 07.04.2023. There are no allegations of the applicant having misused the indulgence so granted.

16. On the other hand, the learned APP submits that, in the present case, circumstantial evidence clearly points out the involvement of the applicant in the crime. He submits that the deceased had made last phone call to the applicant informing him that she is present near the Metro Station. The CDR mobile location details of the applicant also show that he was later present near the Metro Station and thereafter, moved around the city. He submits that it also shows his location near the place of recovery of the dead body of the deceased. He submits that the CDR details also show that the applicant made several phone calls to certain lawyers probably to seek advice on the crime that he had committed.
17. He further submits that the applicant, though was representing the deceased in her matrimonial disputes, later developed a relationship with the deceased. As the deceased wished to move back with her husband, he first caused injury to her, for which the previous FIR was registered, and later committed the crime in question. He submits that merely because the applicant stood acquitted of the offence charged in the said FIR, it would not enure to the benefit the applicant inasmuch as, the deceased



could not depose in the same and, in fact, the applicant took benefit of her death.

18. He submits that as far as the FSL report is concerned, the same clearly establishes that the blood stains that were recovered from the car of the applicant, belonged to the deceased. He submits that merely because the team from the FSL had not signed the seal containing the exhibits, it would not make any difference inasmuch as, the said witness was merely to extract the blood samples, if any, found from the vehicle or the house of the applicant. In any case, the FSL report itself states that on extraction of the blood stains, they were handed over to the IO for purposes of properly drying the same and thereafter forwarding them to the FSL. He submits that the entire chain of custody of the samples has been and shall be proved before the learned Trial Court and this is not the stage of giving benefit to the applicant for the alleged discrepancies, which the learned counsel for the applicant is trying to highlight.
19. I have considered the submissions made by the learned counsels for the parties.
20. As is evident from the above, the case against the applicant is based on circumstantial evidence. Most importantly, the alleged recovery of the blood stains of the deceased from his car. Whether the submission made by the learned counsel for the applicant would be sufficient to procure acquittal for the applicant before the learned Trial Court is not to be opined by this Court at the present moment. The fact remains that the



applicant has been in custody for more than three years; the trial is remaining pending since the year 2018; only 14 out of 44 witnesses have so far been examined; and the applicant was released on *interim* bail for two substantial periods between 2020 to 2023 and there is no allegation that the applicant, in any manner, misused the indulgence so granted.

21. Keeping in view the principles that are applicable for grant of bail, in my opinion, therefore, the applicant has been able to make out a case for being released on bail.
22. Accordingly, it is directed that the applicant be released on bail in FIR no.0508/2018, registered with Police Station: New Usmanpur, North-East District, Delhi under Sections 302/201 of the IPC on furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the Ld. Trial Court, and further subject to the following conditions:
 - i. The Applicant will not leave the country without the prior permission of the learned Trial Court.
 - ii. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
 - iii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not



be switched off or changed by him without prior intimation to the Ld. Trial Court and the IO concerned. The mobile location be kept on at all times.

- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or tamper with the evidence of the case while being released on bail.

23. 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 the merits of the matter.
24. The Bail Application is disposed of in the above terms.
25. A copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

FEBRUARY 26, 2024
RN/ss

Click here to check corrigendum, if any