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

+ **BAIL APPLN. 1298/2024**

PRAMOD @ LUDI

.....Petitioner

Through: **Mr.Vishal Raj Sehijpal & Mr.Anwar
A. Khan Advocates**

versus

STATE OF NCT OF DELHI

.....Respondent

Through: **Mr.Raghvinder Varma, APP for the
State.**

Insp.Chhote Lal, Ps Sari Rohilla

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

12.07.2024

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1. Present bail application has been filed under Section 439 Cr.P.C. for bail in case FIR no.0599 dated 19.09.2022 under Section 302 IPC at PS Sarai Rohilla.
2. The facts in brief from the status report are that on 19:09.22, information was received at PS Sarai Rohilla via DD No. 18A regarding a dead body found on the walking track towards Lanka Puri, 56 Bigha DDA Park, Shastri Nagar, Delhi. The case was assigned to SI Ghanshayam for further necessary action. SI Ghanshayam, along with Ct. Deepak No. 2416/N, arrived at the scene where they found the dead body of a male aged about 30-35 years lying on the walking track towards Lanka Puri, 56 Bigha Park, Shastri Nagar. Various injury marks were observed on the body, and blood was present nearby. The



crime scene was inspected by the Crime Team/North, and exhibits were collected by the police. The deceased was later identified as Deepak @ Ganja, S/o Late Devi Ram, R/o B-1557, Shastri Nagar, Delhi. The body was preserved at Subzi Mandi Mortuary, Delhi. During the investigation, statements under section 161 CrPC were recorded from witnesses Kuldeep Sharma, Suneel Sharma, and Rajesh Kumar. Witness Kuldeep Sharma stated that he had seen both accused, Pramod @ Ludi and Sunny @ Kaliya, with the deceased Deepak just before the incident. Witnesses Suneel Sharma and Rajesh Kumar had also last seen both the accused with the deceased, when Deepak was lying injured on the walking track in 56 Bigha DDA Park. Both accused were arrested and sent to judicial custody. Exhibits were collected from the scene, and blood-stained clothes of both accused were seized and sent to FSL for analysis. The FSL results indicated that the capri pants of the accused Sunny contained bloodstains, and the DNA extracted from those stains matched the DNA of the deceased.

3. During the investigation, the post-mortem report was collected from Aruna Asif Ali Hospital. The doctor opined that the cause of death was cranio-cerebral damage consequent to blunt force impact to the head, which was sufficient to cause death in the ordinary course of nature. All injuries were ante-mortem, fresh in duration, and caused by blunt force/surface impact. However, viscera was preserved to rule out any intoxication at the time of death. The viscera results indicated the presence of ethyl alcohol.
4. After completing the investigation, the chargesheet was filed on 06.12.2022, and the case is currently pending trial. Both accused are in



judicial custody. Out of 26 prosecution witnesses, 4 have been examined. According to the records, the accused Pramod @ Ludi has no previous involvement except for the present case.

5. Learned counsel for the petitioner submits that it is a case of 'last seen' and there is no eye witness. Learned counsel submits that the witnesses to the last seen namely Kuldeep Sharma, Sunil Sharma and Rajesh Kumar have been examined as PW1, PW2 and PW3. Learned counsel for the petitioner submits that none of the witnesses have supported the case of the prosecution and have been declared hostile. Learned counsel submits that even in the cross examination by the learned APP nothing material has come against the accused. Learned counsel submits that there are 34 witnesses cited by the prosecution out of which all material public witnesses have been examined. Learned counsel submits that the accused is in custody since 20.09.2022. It has been submitted that there are no criminal antecedents and therefore the accused may be admitted to bail.
6. Learned APP has opposed the application on the ground that it is a heinous offence. Learned APP submits that there was last seen evidence on the basis of which the present petitioner along with co-accused were arrested. Learned APP submits that the substantial trial is yet to take place and if the accused is admitted to bail, he may not attend to the trial and he may threaten the witnesses and may tamper with the evidence. The principles underlying the grant of bail in serious cases are *inter alia* held in ***Kalyan Chandra Sarkar v. Rajesh Rajan*** (2004) 7 SCC 528 as well as in ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra***, (2005) 5 SCC 294. It is a settled proposition



that rule is bail and not the jail.

7. In ***Kalyan Chandra Sarkar*** (supra), it has been held as under:

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. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)

8. In ***Ranjitsing Brahmajeetsing Sharma*** (supra), it has been held as under:

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

9. The perusal of the charge-sheet indicates that on 19.09.2022 on receipt of a telephone call a deadbody was found at the walking track towards Lankapuri side, 56 Bigha DDA Park, Shashtri Nagar, Delhi of a male



around 30-35 years of age. On inspection it was found that there were multiple injuries on the body. The FIR was registered. On preliminary enquiry no clue could be found even from the CCTV cameras. The case of the prosecution is that during investigation PW1 Kuldeep Sharma stated that on 18.09.2022 at around 8 p.m. while he was going home, he saw Deepak(deceased) sitting along with the present petitioner and Sunny, they were talking about drinking liquor. On the basis of this, the efforts were made to trace the present petitioner. In the meanwhile another witness PW2 Sunil Sharma also stated that on 18.09.2022 at around 9 p.m., he was in the park along with his friend Tikka and took liquor and found the present petitioner along with Sunny present there. Sunil Sharma also found Deepak lying on the pavement with the blood oozing out from his head. The accused persons were arrested. Allegedly, the accused persons gave the disclosure statements. The clothes of the accused persons were seized and were sent to FSL for examination. The statements of the witnesses were recorded. As per the status report, the blood stains on the clothes of Sunny matched with the blood of deceased Deepak. The perusal of the testimony of PW1 Kuldeep Sharma indicates that he turned totally hostile and stated that he had not seen anybody at the shop of Sanjay. The witness had also resiled from his statement under Section 164 Cr.P.C. In the cross examination by learned APP. PW1 Kuldeep Singh, stated that he was threatened and tutored by the IO. Similarly, PW2 Sunil Sharma stated before the court on oath that he had seen the present petitioner along with co-accused and Deepak in the park. He has also stated that Deepak was lying on the walking track of the park.



However, he stated that he was drunken at that time and after staying sometime he returned to his home. In the cross examination by the APP the witnesses admitted to have made the statement. Mr.Rajesh Kumar also turned hostile and stated that he had not seen the accused persons and deceased in the park. The witness also resiled from his testimony recorded under Section 164 Cr.P.C.

10. It is a settled proposition that at the stage of bail the court is not expected to scrutinise the evidence meticulously. The court is required to take only a prima facie view. The probative value of the witnesses is also not to be assessed at this stage. The testimonies of the public witnesses indicate certain material contradictions to the case set up by the police. Thus, without going into further evaluation of the evidence, and making any comments of the merits of the case, this court is of prima facie view that the petitioner be released on furnishing a personal bond in the sum of Rs.25,000/- with a surety of the like amount to the satisfaction of the trial court, subject to the following conditions:
- a) the Petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
 - b) the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;
 - c) the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - d) the Petitioner shall provide his mobile number(s) to the Investigating Officer and keep it operational at all times; and



- e) In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
11. However, no expression made herein shall tantamount to be an expression on the merits of the case.
12. The bail application and all the other pending application stands disposed of.

DINESH KUMAR SHARMA, J

JULY 12, 2024
rb/na..