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

+ **BAIL APPLN. 1300/2024**

HARISH @ SANDA

.....Applicant

Through: Mr. Rahul Dhankhar and
Mr. Parvesh Bhargava,
Advs.

versus

STATE (GOVT. OF N.C.T OF DELHI)Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with
Insp. Shiv Prakash, PS
Alipur.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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03.07.2024

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') read with Section 482 of the CrPC seeking bail in FIR No. 495/2018, registered at Police Station Alipur (Rohini), for offences under 302/201 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959.

2. The brief facts of the case are that on 23.12.2018, information was received that a dead body was lying on the bank of a dirty drain. The police officers reached the spot and found the naked body of a male with parts of the chest and hand seemingly consumed by an animal. A ring was found on the left hand of the deceased. Despite showing the body to nearby individuals, identification could not be established. Two bullets

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were recovered from the body of the deceased person during post mortem. On the basis of the same, the present FIR was filed.

3. During investigation, on 03.01.2019, Sub Inspector Sandeep from the Police Station Alipur informed the Investigating Officer that two cars, that is, a Santro and an Alto, had been found abandoned near Singhol Red Light, GT Karnal Road on 22.12.2018. It is alleged that blood and a black T-shirt was found in the trunk of the Alto car.

4. The owner of the Alto car, that is, Vipin *alias* Chotu was called for questioning. He identified the T-shirt found in the Alto car and the ring to be that of his friend Deepak Pandit (the deceased).

5. The statement of Vipin *alias* Chotu was recorded where he stated that in early December, co-accused Deepak Tomar (with whom the deceased used to work earlier) threatened the deceased and accused the deceased of having plotted to have him killed. He stated that the deceased had requested to take his car to visit his home in Uttar Pradesh. On 20.12.2018, the deceased arrived with the applicant and co-accused Deepak Tomar and co-accused Sandeep *alias* Choti in Vipin's Alto car and one Santro car. He stated that the deceased informed that his dispute with co-accused Deepak Tomar had been resolved. He also stated that he received a call from the aunt of the deceased on 23.12.2018, who informed him that she had received a call from someone identifying as 'Deepak Tomar', who stated that the deceased had shot a boy named Manish and required ₹3,00,000/- to resolve the case.

6. Vipin *alias* Chotu took the officer to the office of Manish *alias* Manni. On local investigation, it was found that Shiv Kumar, Jitender and Jatin also used to visit the said office.

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7. In view of the same ongoing investigation, Jitender was called and his statement was recorded. Jitender Singh joined the investigation and mentioned that on 21.12.2018, he went to a party at the office of co-accused Manish and co-accused persons, namely, Manish and Sumit were already present there. He stated co-accused Pradeep and Shiv Kumar also joined them there. He stated that he left the party after a while as he wasn't interested in drinking alcohol. He stated that on 24.12.2018, co-accused Manish asked him to bring some clothes and told him that he had shot the deceased and dumped the body in the drain with the help of the other accused persons, including the applicant.

8. Jatin, in his statement under Section 161 of the CrPC, stated that he had gone to a party at the house of co-accused Manish with Jitender on 21.12.2018. He stated that after Jitender left, other accused persons, including the applicant, came to the office in two cars, that is, a Santro and an Alto. He stated that as soon as they entered the office, co-accused Manish asked him to leave whereafter he left along with Shiv Kumar. He stated that he last saw the deceased with the applicant, co-accused Deepak Tomar, co-accused Sandeep Choti and co-accused Manish *alias* Manni.

9. It is the case of the prosecution that the applicant, along with the other accused persons, met the victim at the office of co-accused Manish *alias* Manni in Sindhu Village for a party along with Jitender, Jatin and Shiv Kumar. It is alleged that the accused persons hatched a conspiracy to murder the victim. It is alleged that after Jitender, Jatin and Shiv Kumar left the office, the accused persons first gave beatings to the victim at the office and then took the victim to a field in the village where they shot him dead. It is alleged that after murdering the victim, the accused



persons disfigured his face and removed his clothes to hide his identity and threw his body at the *ganda nala* near Sindhu village.

10. It is mentioned in the Status Report that as per the Biology (DNA) Report, the DNA profile generated from the exhibits drawn from the Alto Car match the DNA from the blood sample of the deceased.

11. The learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the present case merely on the basis of the last seen theory.

12. He submits that there are no eye witnesses in the present case that support the case of the prosecution. He submits that no motive has been established by the prosecution to implicate the applicant in the present case.

13. He submits that no recovery was effectuated from the applicant either. He submits that the prosecution has not adduced any CDR to prove that the applicant was present at the alleged spot of crime either.

14. He submits that the applicant was arrested on 10.07.2019 and even though the charges were framed in the present case on 06.03.2020, none of the 61 prosecution witnesses have been examined till now.

15. He submits that the trial will likely take long and the applicant cannot be subjected to undergo incarceration for an indefinite period.

16. The learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the applicant is involved in multiple other cases and there is a chance that the applicant will threaten the witnesses if he is granted bail.

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17. I have heard the learned counsel for the parties and perused the record.

18. It is the case of the prosecution that the victim was murdered in cold blood by the accused persons due to some previous dispute between co-accused Deepak Tomar and the victim. It is alleged that the accused persons beat the victim at the office of co-accused Manish before shooting him dead in a field. Thereafter, they threw the body of the applicant in a drain.

19. It is however relevant to note that there is no direct evidence against the applicant in the present case. The prosecution has relied on the statements of witnesses-Jitender, Jatin and Shiv Kumar who were allegedly present at the office of the co-accused Manish and left before the alleged incident. While Jitender has made no mention of the applicant, Jatin and Shiv Kumar have stated that the applicant and the deceased had come to the office in two cars-Alto and Santro.

20. It is trite law that where the case rests on circumstantial evidence and 'last seen' theory is relied upon, the circumstance of the accused and the applicant being last seen together does not by itself lead to the inference that the accused committed the crime. Other circumstances have to be there to establish connectivity between the accused and the crime [Ref. **Kanhaiya Lal v. State of Rajasthan : (2014) 4 SCC 715**].

21. The learned APP, on being pointedly asked, states that neither the CDR of the victim has been obtained nor the CDR of the accused persons has been analysed to establish the presence of the accused persons at the office of the co-accused Manish. It is also pertinent to note that the alleged dispute between the accused persons and the victim also has not been probed by the prosecution.

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22. *Prima facie*, the entire case of the prosecution rests primarily on the last seen theory which is sought to be established by the State solely on the basis of the statements of the witnesses.

23. It is also relevant to note that the applicant is in custody since 10.07.2019 and the trial has not proceeded much. It was pointed out that no witness has been examined as yet. The applicant has suffered incarceration for a significant period of time.

24. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeeb***: AIR 2021 SC 712, has held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail. The relevant portion of the aforesaid judgment is reproduced hereunder:

“19. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected”

25. Admittedly, in the present case, out of the sixty-one prosecution witnesses, no witness has been examined as of yet. Further incarceration in such scenario would amount to punishment without the conclusion of trial. The applicant cannot



be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time.

26. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

27. Without commenting further on the merits of the present case and keeping in mind the facts and circumstances of the case, I am satisfied that the applicant has made out a case for grant of regular bail.

28. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall not, in any manner whatsoever, contact the witnesses;
- c. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
- d. The applicant shall appear before the learned Trial Court as and when directed;
- e. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.



29. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

30. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

31. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JULY 3, 2024