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

+ **BAIL APPLN. 1491/2024 and CRL.M.A. 22745/2024**

MOHD EJAJ

.....Petitioner

Through: Mr. Jai Shankar, Ms. Nandita Rao,
Mr. Manoj Kumar Makhija, Mr. Amit
Kumar Dubey, Mr. Mayank Besoya
and Mr. Ashish Kumar, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for the
State with SI Virender, P.S. Kamla
Market.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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18.11.2024

CRL.M.A. 22746/2024

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

BAIL APPLN. 1491/2024

By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No.29/2021 dated 05.02.2021 registered under sections 302/201 of the Indian Penal Code, 1860 ('IPC') at P.S.: Kamla Market, Delhi. Consequent upon completion of investigation, the offence under section 34 IPC has been added *vide* chargesheet dated 03.06.2021.

2. Notice on this petition was issued on 30.04.2024.
3. Status Report dated 21.05.2024 has been filed.



4. Nominal Roll dated 20.05.2024 has been received from the Jail Superintendent.
5. Pursuant to intimation issued *vide* order dated 30.09.2024 to the next-of-kin of the deceased, being the son of the deceased, is present in court.
6. Mr. Jai Shankar, learned counsel appearing for the petitioner submits, that a perusal of the chargesheet will show that the essential allegation against the petitioner is that he was the caretaker of a *Sulabh Sauchalaya* at Kamla Market, Delhi where the deceased is alleged to have been killed; that the petitioner had committed the murder by reason of a certain monetary dispute with the deceased; and that after committing the murder, the petitioner alongwith co-accused persons Mohd. Mustaq and Deepak Mallik, disposed-of the body of the deceased in a bag, by throwing it at a spot near Minto Road.
7. Learned counsel further submits, that the only material evidence being cited by the prosecution against the petitioner is a CCTV footage, which according to the prosecution, shows the petitioner alongwith the two co-accused persons disposing-of the body of the deceased. Furthermore, it is the prosecution case, that a rope, which they say was used to strangle the deceased (the cause of death, as per the post-mortem report, being death by strangulation), was recovered at the petitioner's instance on his disclosure statement.
8. It is argued by Mr. Shankar, that even if the CCTV footage is found to be genuine and the petitioner is identified in the footage as one of the persons who had disposed-of the deceased's body, even so, the most serious offence that would be made-out against the petitioner is that of



destruction of evidence under section 201 IPC, which carries a maximum sentence of 07 years.

9. Counsel points-out, that as would be seen from the nominal roll, the petitioner has already suffered judicial custody of more than 03 years; that he has no other criminal antecedents; and that his jail conduct has been 'satisfactory'.
10. Most importantly, learned counsel argues that the two co-accused persons, namely Mohd. Mustaq and Deepak Malik, have already been admitted to regular bail *vide* orders passed by the learned Sessions Court and by a Co-ordinate Bench of this court, respectively.
11. Furthermore, it is submitted by learned counsel for the petitioner, that out of the 28 prosecution witnesses cited in the chargesheet, not even one has been examined so far before the learned trial court.
12. In the circumstances, it is prayed that the petitioner be enlarged on regular bail.
13. On the other hand, Mr. Tarang Srivastava, learned APP appearing for the State, has opposed the grant of bail by submitting that the petitioner's role is not restricted to only destroying evidence which is punishable under section 201 IPC, but as a matter of fact, out of the 03 accused persons it is only the petitioner who had motive to kill the deceased, since the deceased had entrusted his savings to the petitioner for safe custody and when the deceased asked for the return of his money for the marriage of his daughter, the petitioner declined to return that money.
14. Learned APP has also argued that being the caretaker of the *Sulabh Sauchalaya* where the deceased was killed, it is for the petitioner to



answer as to what happened in the premises that was under his care, and for which he was responsible, which the petitioner must do in view of section 106 of the Evidence Act, 1872 during the trial; but in the meantime, the allegation against the petitioner in relation to section 302 IPC must be taken to be credible.

15. Learned APP further submits, that several material witnesses who have given statements under section 161 Cr.P.C. in the course of investigation, are yet to be examined; and that therefore the petitioner does not deserve to be granted bail, at least at this stage.
16. Insofar as the progress of the trial is concerned, learned APP only corrects learned counsel for the petitioner to say, that of the 28 prosecution witnesses cited in the chargesheet, the examination-in-chief of one formal witness is underway.
17. The court has also heard the son of the deceased, who has supported the submissions made on behalf of the State; and has only reiterated that his father had asked the petitioner for return of the money that he was holding in safe custody for the deceased and it is in retaliation to such demand that the petitioner did his father to death.
18. However, upon being queried, the son has said that he was not personally privy to information about money having been entrusted by his father to the petitioner for safe-keeping; and his knowledge derives from what he has been told by other persons.
19. Upon a conspectus of the facts and circumstances of the case, the following factors weigh with the court at this stage:
 - 19.1. That the only concrete piece of evidence that the prosecution is citing against the petitioner is a CCTV footage in which the



petitioner is alleged to be seen disposing-of the body of the deceased alongwith two other co-accused persons, which would amount to an offence under section 201 IPC, namely of destruction of evidence, which would attract a maximum punishment of 07 years;

- 19.2. That furthermore, the prosecution relies on statements of witnesses recorded under section 161 Cr.P.C. in the course of investigation, to allege that the petitioner was the one who had the motive to kill the deceased, since the petitioner was holding money on behalf of the deceased, which he refused to return when demanded by the deceased; however, the mere existence of motive would not be sufficient to bring home guilt under section 302 IPC;
- 19.3. That two co-accused persons are already on regular bail; and
- 19.4. That in this backdrop, the petitioner has already been in judicial custody for about 3½ years; he has no other criminal involvements; his jail conduct has been ‘satisfactory’; while on the other hand, only the first of 28 prosecution witnesses is being examined before the learned trial court as of now, implying thereby that the trial will take a long time to be concluded.
20. In view of the foregoing, and especially the fact that the petitioner has already suffered judicial custody of about 3½ years while only one prosecution witness is under examination at this time, this court is persuaded to admit the petitioner – ***Md. Aijaz s/o Md. Mukeem*** – to *regular bail* subject to the following conditions :



- 20.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five thousand Only) with 02 sureties in the like amount, out of which at least one must be from a family member and the other must be a local surety, to the satisfaction of the learned trial court;
- 20.2. The petitioner shall furnish to the Investigating Officer/S.H.O, P.S.: Kamla Market, Delhi a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 20.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 20.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 20.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
21. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
22. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.



23. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
24. The petition stands disposed-of.
25. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 18, 2024
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