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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1558/2024

RAJENDER

.....Petitioner

Through: Ms. Dolly Sharma, Adv.

versus

STATE

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with IO /
Insp. Anil Sharma, PS
Paschim Vihar West and
Insp. Naresh Kumar, PS
KNK Marg.

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 regular bail in FIR No. 1225/2015 dated 20.11.2015, registered at Police Station K. N. Katju Marg, for the offence under Section 365 of the Indian Penal Code, 1860 ('IPC').

2. The brief facts of the case are that on 26.08.2015, the complainant lodged a missing report of his father Virender (the victim). The bank account details of the victim and CCTV footage was obtained, which allegedly showed a person, namely, Chandrasen withdrawing money from the account of the victim at the ATM. It was found that Chandrasen had withdrawn the money on the instructions of co-accused Udayveer. Co-accused Udayveer was the driver of the victim for the previous one and a



half years.

3. The mobile of the victim was found to be used by one Dharmender, who stated that the same was given to him by co-accused Udayveer.

4. It is alleged that the deceased was living with the family of co-accused Udayveer till 04.07.2015 at the house that had been given by him to co-accused Udayveer. He was also frequenting the house of one Aasha Devi.

5. It is the case of the prosecution that co-accused Udayveer, on arrest in the present case, disclosed the involvement of the applicant. It is alleged that the applicant along with co-accused Udayveer murdered the victim and thereafter decapitated his body. It is alleged that the accused persons beheaded the victim as well. Sections 302/201 read with Section 120B of the IPC were added in the case after the headless body of the victim was found at two different places in Bareilly, Uttar Pradesh.

6. It is alleged that the CDR of the accused persons shows that they were in Muradabad at the time of the alleged incident.

7. The learned counsel for the applicant submits that the applicant has clean antecedents and he has been falsely implicated in the present case. She submits that no clear motive has been attributed to the applicant.

8. She submits that the applicant is not named in the present FIR and has been arrested merely on the basis of the disclosure statement of the co-accused Udayveer.

9. She submits that the applicant did not withdraw any money from the ATM Card of the deceased and no recovery was effectuated from him either. She submits that Chandrasen, who was seen withdrawing the money on CCTV Footage, has not been arrested in the present case.



10. She submits that the material prosecution witnesses have already been examined in the present case and their testimonies are wrought with discrepancies. She submits that no purpose would be served by subjecting the applicant to undergo further incarceration.

11. She submits that on 07.03.2014, the deceased had made a complaint to the SHO, Police Station KN Katju Marg against his family members, including the complainant, apprehending threat to his life and property.

12. She submits that the applicant is an HIV patient and was granted interim bail on multiple occasions. She submits that the applicant has not missed the liberty or violated any of the conditions imposed on him when he was enlarged on interim bail.

13. She submits that the applicant has a wife who is a cancer patient and he has two minor daughters as well.

14. The learned Additional Public Prosecutor vehemently opposes the present bail application. He submits that the allegations levelled against the applicant are grave in nature.

15. He submits that the accused persons deliberately chopped the body of the victim and threw the same in different places. He submits that the applicant was declared to be a Proclaimed Offender in the present case and was arrested subsequently.

16. I have heard the learned counsel for the parties.

17. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or



fleeing if released on bail, reasonable apprehension of the witnesses being threatened; etc.

18. The allegations in the present case are grave and heinous in nature. The victim is alleged to have been killed by the accused persons and his body was brutally decapitated and disposed of as well.

19. It is however relevant to note that the complainant has not expressed any suspicion against the applicant in the FIR either. Instead, he has explicitly expressed suspicion against co-accused Udayveer and his wife, who is not arrayed as an accused in the case, that they had kidnapped the victim.

20. It is not the case of the prosecution that the applicant withdrew any money from the account of the victim. The person who was seen withdrawing the money on CCTV Footage, that is, Chandrasen, has also not stated that he was withdrawing the money at the instance of the applicant. The said person has not been arrested in the present case either.

21. It is also pertinent to note that there are no independent witnesses in the present case. At this stage, it cannot be denied that there is no direct evidence against the applicant and he has been implicated primarily on the disclosure statement of the co-accused Udayveer and the CDR of the applicant which showed that he was allegedly at Muradabad at the time of the incident. The veracity of the said evidence and the allegations and defences would be considered during the course of the trial.

22. At this stage, the possibility of the applicant not being involved in the commission of the alleged offence cannot be ruled out.

23. It is also a settled law that the long period of incarceration is an important factor which has to be kept in mind while



considering the application for bail. The applicant is in custody since 01.05.2016. It is pointed out that 25 witnesses are yet to be examined in the present case, therefore, the speedy trial does not seem to be a possibility. The fact as pleaded by the applicant that he is HIV+ve patient and that his wife is a cancer patient, is not denied by the State. The applicant is also stated to have one minor child.

24. It is contended on behalf of the State that the accused, during the course of investigation, was declared a Proclaimed Person and ought not to be granted benefit of bail. It is not denied that, pursuant to the arrest, the applicant was released on interim bail on a few occasions and the liberty was not misused. Thus, the benefit of bail had been granted to the applicant on earlier occasion despite the fact that he was declared a Proclaimed Person during the course of investigation. The same, thus, cannot be a ground for denying the benefit of bail to the applicant at this stage, when, admittedly, even after almost eight years of registration of FIR, the trial is not likely to conclude in near future.

25. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeer***: 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



unlikely 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"

26. In view of the same, this Court is of the opinion that no purpose would be served by keeping the applicant in further custody.

27. It is also pertinent to note that the prime witnesses have already been examined and thus, there cannot be any apprehension of any witnesses being influenced.

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

29. 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.

30. 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 under no circumstance leave the country without the permission of the learned Trial Court;



- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. 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;
- e. 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.

31. 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.

32. 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.

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

AMIT MAHAJAN, J

JULY 3, 2024