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

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Judgment delivered on: 27.02.2024

+ **BAIL APPLN. 2331/2023**

TANNU CHAWLA @ TARUN

..... Petitioner

Through: Mr. Kanhaiya Singhal, Mr. Ujwal Ghai, Ms. Vani Singhal, Mr. Prasanna, Mr. Teeksh Singhal, Mr. Anmol Sharma, Mr. A. Chopra, Ms. Deepali Pawar and Mr. Udit Bakshi, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Hemant Mehla, APP for State with Insp. Yashveer Singh and SI Parmendra Singh.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

1. The present petition has been filed under Section 439 CrPC read with Section 482 CrPC seeking regular bail in connection with FIR No.2/2014 under Sections 302/34 IPC and Sections 25/27 of Arms Act registered at Police Station Kamla Market.

2. The case of the prosecution is that on 02.01.2014, a person namely Sarfaraz came to Police Station Kamla Market and stated that a girl namely Neha has been found dead at first floor of *Kotha* No. 57, G.B. Road, Delhi



and accordingly, a DD Entry No.20A was lodged which culminated into present FIR.

3. In the FIR Sarfaraz, who was care taker of that particular *Kotha*, stated that he reached the said premises at about 09:45 a.m. and inquired whereabouts of Neha and he got to know that a day before at about 11:00 p.m. she had gone to her room with one of his regular customer and has not come downstairs in the morning like normal days.

4. The police initiated the investigation, the petitioner and another co-accused namely, Yogesh were arrested and their disclosure statements were recorded on the basis of which alleged offence weapon i.e. knife and their clothes were recovered.

5. The learned counsel for the petitioner submits that the case of the prosecution is improbable *vis-a-vis* last seen theory. Elaborating further, he submits that FIR in question was registered at about 12:30 p.m. on 02.01.2014, however, it does not mention the name of the present petitioner.

6. He invites the attention of the Court to the testimony of the chowkidar of the *kotha* namely, Vasudev Pandey @ Vasu Nepali, who was examined by the prosecution as PW-5, to contend that he has specifically mentioned that the petitioner was present with deceased Neha, on the previous night. He further contends that though PW-5 has admitted that he was present at *kotha* at about 10:30 am to 11:00 am when the police arrived and Sarfaraz was also present at that point of time on whose statement the FIR was registered, but the presence of the petitioner with Neha on the previous night does not find mention in the FIR. According to the learned counsel, the FIR only records that an unknown person has committed the murder of Neha.

7. He submits that from the testimony of PW-5, it is also apparent that



apart from the accused persons, there were other persons who were also present in different rooms of the *kotha*, as well as, in the hall, therefore, the possibility of third party intervention cannot be ruled out.

8. He further submits that deceased Neha was found wearing clothes including a jacket which was bearing the cut marks which itself goes to show that the deceased were not was not having any sexual activity.

9. According to the learned counsel, even the chance fingerprints which were lifted from the spot were not found matching with the present petitioner.

10. He submits that recovery of weapon and clothes is also doubtful, in as much as, the police official SI Rakesh Kumar, who was examined as PW-25 and who is witness to the disclosure statement, as well as, to the recovery, has not supported the case of the prosecution. Further, no independent witness was associated for the recovery of offence weapon and clothes of the petitioner.

11. Inviting the attention to the testimony of PW-25, the learned counsel submits that the said witness has rather stated that the accused had not made any disclosure about the recovery in his presence nor the I.O. asked the accused about the location of the knife when they were travelling to the spot of recovery in question. Another official witness i.e. HC Pardeep Kumar, who was examined as PW28, also deposed on the same lines as he stated that the IO in his presence did not ask the accused as to where the knife was kept.

12. He submits that no independent public person was associated as witness to the arrest of the petitioner, who was arrested from outside a metro station where public witness would be easily available.



13. He further submits that other witnesses namely, Constable Yogesh and Constable Ram Kumar were allegedly present at the time of recovery of the alleged weapon i.e., knife but strangely the said two witnesses have not been examined and cited as witnesses by the prosecution.

14. He submits that even the TIP has not been conducted in the present case which was imperative having regard to the fact that apart from the petitioner, number of other persons was present at *kotha* at that relevant time.

15. He contends that CDRs on which heavy reliance has been placed, cannot be relied upon to hold the petitioner liable as the mobile no. 9654313965 to which the said CDRs pertain does not belong to the petitioner and even not registered in his name.

16. He submits that there is gross delay of 37 to 38 days in sending the knife to FSL, in as much as, the petitioner was arrested on 05.01.2014 and the recovery of knife was allegedly made on 07.01.2014, whereas the same was sent to the FSL on 15.02.2014.

17. He further submits that the petitioner has faced incarceration for about 09 years and he was enlarged on interim bail as per the HPC guidelines, as well as, subsequently he was granted interim bail by this Court but the said liberty granted to him was never misused by him and he surrendered within time.

18. It is further submitted that the petitioner has clean antecedents and he does not have any criminal record. All material witnesses have been examined. The petitioner is the only bread winner of his family which comprises of his widow mother, newly wedded wife and one year old child. In this backdrop, the learned counsel urges this Court to enlarge the



petitioner on bail.

19. *Per contra*, the learned APP has argued on the lines of the Status Report. He has invited the attention of the Court to the statements of PW-5 and PW-17 to submit that the last seen theory stands established through said witness, therefore, the chain of circumstances is complete.

20. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

21. The present case is based on circumstantial evidence. It is trite when a case rests solely upon circumstantial evidence, circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and prosecution must establish a chain of unbroken events unerringly pointing to the guilt of the accused and none other.

22. The probative value of the testimony of PW25, who is witness to the disclosure statement, as well as, to the recovery will be seen by the Trial Court at the stage of trial but a bird's eye view of his testimony shows that he has not supported the case of the prosecution and has rather, created serious doubts about the recovery and the disclosure statement. Even PW28 has also not supported the disclosure and the recovery. Intriguingly, there is no public witness to the recovery and the arrest of the petitioner.

23. Further, the submission of the learned counsel that the prosecution version *vis-a-vis* last seen theory is improbable, cannot be ruled out at this stage, more particularly for the reason that PW5/Vasudev Pandey @ Vasu Nepali, who was present when the police had arrived at *kotha* at about 10:30 am-11 am, along with Sarfaraz, an author of the FIR, but still the present petitioner was not named in the FIR, in as much as, it is stated in the FIR that an unknown person committed the murder of Neha. To the same effect



is the statement of brother of the deceased recorded u/s 161 CrPC who also feigned ignorance as to the name of the person who committed the murder of his sister Neha.

24. There is also gross delay of 37 to 38 days in sending the alleged offence weapon i.e. knife to FSL. The petitioner was arrested on 05.01.2014 and the recovery of knife was allegedly made on 07.01.2014, but the same was sent to the FSL on 15.02.2014 which also *prima facie* raises doubt as regard the recovery of the same at the instance of the petitioner.

25. It is also not in dispute that the test identification parade was not conducted in the present case despite the fact that apart from the present petitioner number of other persons was present at the *kotha* at the relevant time.

26. There also appears to some substance in the contention of the learned counsel for the petitioner that the CDRs does not advance the case of prosecution as the mobile no. 9654313965 to which the said CDRs pertain does not belong to the petitioner and even not registered in his name.

27. The aforesaid circumstances *prima facie* have the potential of probalizing the defence of the petitioner to an extent and do not warrant keeping the petitioner in custody for an indefinite period to await the conclusion of trail. An ultimate acquittal with continued custody would rather, be a case of grave injustice. Thus, there are justified reasons to grant of bail to the present petitioner.

28. That apart, it is also not in dispute that the petitioner is facing incarceration for the last 9 years and all the public witnesses have been examined, therefore, there is no possibility of the petitioner influencing the any public witnesses in the event, he is enlarged on bail.



29. One of the purposes of keeping the petitioner in custody is only to ensure his availability during trial and to receive the punishment in the event he is held guilty. The presence of the petitioner can otherwise, be ensured by putting appropriate conditions.

30. The petitioner was admittedly, granted interim bail during pandemic and even subsequently, but he did not misuse the liberty so granted to him. Therefore, the petitioner is not a flight risk. It is also not in dispute the petitioner has clean antecedents.

31. Having regard to the circumstances discussed above and the long incarceration period of the petitioner, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 20,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

32. The petition stands disposed of.

33. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.



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34. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

CRL.M.(BAIL) 325/2024 (interim bail)

35. In view of the regular bail granted to the petitioner in the main bail application, this application is rendered infructuous and is disposed of as such.

36. Order *dasti* under signatures of the Court Master.

37. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 27, 2024/dss

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 29.02.2024
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