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

+ **BAIL APPLN. 2369/2023**

NITIN @ DHAGGA

.....Petitioner

Through: Mr. Sajid Ahmed and Mr. Firoz Iqbal
Khan, Advs.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondent

Through: Mr. Aman Usman, APP for State with
SI Umesh Dala, PS Mundka.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

28.11.2024

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1. This petition has been filed seeking regular bail in FIR No.493/2021 dated 01st June, 2021 under Sections 365/34 IPC registered at police station Mundka, Delhi. Chargesheet was filed under Sections 302/201/364/365/34 IPC & Sections 25/27 Arms Act.
2. The case of the prosecution is based upon an information received from one Poonam that her son Akshay was missing on 01st June, 2021. She stated that the son was taken forcefully by two neighbours in an i20 Car the day before at 11:00 p.m; FIR was registered; and investigation ensued. The i20 car was recovered from a vacant plot which was found containing blood stains. It was found to be belonging to co-accused Naveen @ Ghoda.
3. Subsequently, Naveen @ Ghoda and Charanjeet @ Chintu were arrested basis information; they disclosed that Naveen @ Ghoda wanted to take revenge from the deceased Akshay for not helping him when he was



being beaten by one Surender @ Pappu and his friends. He hatched a conspiracy along with co-accused Charanjeet @ Chintu and the petitioner herein shot dead Akshay after providing him a drink in his i20 car on the intervening night of 31st May, 2021 and 01st June, 2021, and disposed of his dead body in the drain near Jaroda Kala village. The pistol along with two live cartridges was recovered from the co-accused Naveen @ Ghoda. Naveen and Charanjeet identified the place of the incident and the dead body was also recovered at their instance.

4. Subsequently, during investigation, the petitioner was also arrested and, as per the prosecution, three empty cartridges and mobile phone of the deceased was recovered at the instance of the petitioner.

5. Counsel for the petitioner points out that the petitioner has been in custody since more than 3 years and has been released on interim bail (*twice in 2022 and once in 2023*) and never misused his liberty. There is a previous involvement in FIR No.493/2021 under Sections 25/54/59 Arms Act, PS City Bahadurgarh, Haryana in which he is on bail.

6. Counsel for the petitioner further states that the petitioner's name did not crop up in the FIR but later, post the investigation, included in the chargesheet. Material witnesses have been examined, in that PW-1 and PW-2, the mother and the brother of the deceased, have already been examined.

7. The CCTV footage of the time when the deceased was allegedly escorted out of his home by Naveen and Charanjeet at 11:00 p.m. does not show his presence. In any event, PW-1, who was the last seen witness, did not state that the petitioner was present at that time, nor is that the case of the prosecution.

8. He further submits that the case of the prosecution rests on the



presence in the CCTV footage on the intervening night at 3:00 a.m. when Charanjeet and petitioner allegedly came to the home of the deceased and met his mother, PW-1. He states that the FSL opinion regarding the CCTV footage of that time is that *“no opinion could be formed regarding facial image comparison in respect of persons mobbed at PS-1 and PS-3 due to different orientation and insufficient facial image data”*.

9. To this, the APP for the State states that the deposition of PW-1 can be seen where she has identified the petitioner and the FSL report may not be determinative in this regard.

10. As regards the recovery of the mobile of the deceased, counsel for the petitioner states that there was no videography done at that point of time whereas the same was done during the recoveries from the other two co-accused and, therefore, states that the said recovery itself would be considered doubtful of the prosecution's case from a legal point of view.

11. Having considered these circumstances and the contentions of the petitioner as also noting that the petitioner has been in custody for more than 3 years now, and has been released on interim bail previously and not misused his liberty as also the only evidence against him is relating to the CCTV footage which, due to the FSL opinion, is itself in question, the Court is of the opinion that the petitioner is entitled to bail. The depositions of PW-1 and PW-2 have also been perused by the Court.

12. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the



like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner will mark presence physically before the concerned I.O. every Friday at 4 p.m., and will be not kept waiting for more than an hour.
- vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

13. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.



14. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
15. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
16. Order be uploaded on the website of this Court.

ANISH DAYAL, J

NOVEMBER 28, 2024/MK/sc