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

+ **BAIL APPLN. 1684/2024**

VISHAL @ VIKAS

.....Petitioner

Through: Mr. Saurabh Upadhyay, Mr. Akash Yadav, Mr. Durgesh Singh, Ms. Gunjan Kushwaha, Ms. Muskan Kumar Singh, Advs.

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Raghuinder Varma, APP and Insp. Mahendra Kumar, PS Shahbad Dairy.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

09.07.2024

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1. The present application has been filed under Section 439 Cr.P.C. read with Section 482 Cr.P.C seeking a grant of regular bail to the petitioner till the final disposal of the case in FIR No. 436/2020 dated 31/08/2020 registered under Section 302 IPC at P.S. Shahbad Dairy.
2. The facts in brief are that on 31.08.2020 information regarding a dead body near KD Modal School, Sukar Bazar Road, Barwala was received. The call was assigned to ASI Vats Raj who reached on the spot and found the dead body of a 41-year-old male having injuries on the face. The blood was oozing out of the face, chest, and other parts of the body. The dead body was identified as Pradeep Kumar Jindal S/o



Bhim Sain Jindal R/o C-142, Pundrik Vihar, Pitampura, Delhi. The crime scene was inspected. Post-mortem was conducted and a case under Section 302 IPC was registered.

3. Sh. Mukesh S/o Jogeshwar Mahto in his statement recorded on 31.08.2020 deposed that on 30.10.2020 at about 07:00 PM to 07:30 PM he had gone to village Barwala with the deceased on a scooty and Pardeep Jindal purchased a SIM card from a shop situated in front of HDFC Bank. Sh. Mukesh got down from the scooty at Barwala Red Light. During the investigation, it was found that the deceased had purchased a SIM card from shopkeeper Rajesh Shah. The CCTV cameras revealed that 2-3 persons were roaming near the shop.
4. On 16.09.2020, accused Suchit @ Golu S/o Ram Charan, Daulat @ Chintu S/o Mallu Singh were apprehended on motorcycle on DL 8SBH 7455 and Ansar S/o Phool Hasan & Rajesh @ Muneel S/o Ram Prasad were apprehended on motorcycle No. DL 10 SE 5657 on the basis of secret information.
5. During the investigation motorcycle No. DL 8SBH 7455 was found stolen. In a personal search, accused Ansar, Suchit @ Golu, Daulat @ Chintu, and Rajesh @ Munil were found in possession of Rs. 22,000/-, Rs. 21,000/-, Rs. 18,000/- and Rs. 9,000/- respectively.
6. The investigation revealed that Rajesh @ Munil was a previous employee of deceased Pardeep Jindal and he disclosed to have hatched a conspiracy with his friends namely Md. Ansar, Suchit @ Golu, Daulat, Vishal @ Vikas and Rahul. The motive was to rob the money from the deceased. On the day of the incident it was disclosed that after the deceased purchased a SIM from Rajesh Telecom, Suchit @ Golu



and Vishal watched the activities, and thereafter while the deceased stopped his scooty in a desert place near Heliport for urine, the accused persons caught hold the deceased. Allegedly, Suchit @ Golu caught hold the hands of the deceased along with his associates. Daulat hit a stone on the mouth of the deceased Pardeep Jindal and Rahul stabbed a knife at the neck of the deceased Pardeep Jindal.

7. Allegedly Rahul and Vishal took out the keys of scooty and Vishal and Rajesh @ Muneel ran away on the scooty of deceased Pardeep Jindal. In the boot space of the scooty there was Rs. 1,10,000/- which was distributed among the accused persons and Rs. 45,000/- came to the share of the present petitioner.
8. Learned counsel for the petitioner submits that the petitioner is in custody since 21.09.2020. Learned counsel submits that the investigation has already been completed. Charges have been framed. It has further been submitted that the material witnesses have already been examined.
9. Learned counsel for the petitioner submits that there is a very weak case against the petitioner and the petitioner is being punished even before being declared guilty.
10. Learned APP for the state has opposed the bail application on the ground that the petitioner was the main conspirator who was doing *recce* of the deceased even at the time when the mobile SIM was purchased.
11. Learned APP for the state submits that he also got a substantial share of the robbed amount from the deceased. Learned APP submits that in view of the gravity of the offence, the petitioner may not be granted



bail.

12. I have considered the submissions. The parameters for grant of bail in non-bailable offence are very well settled. The detention during the trial cannot be termed as punitive detention. It is a settled proposition that the rule is Bail and not Jail. The consideration for the grant of bail in serious offences has been held in ***Ashim Alias Asim Kumar Haranath Bhattacharya alias Aseem Kumar Bhattacharya V/s. National Investigation Agency***, (2022) 1 SCC 695, it is observed that the charges against the Accused are undoubtedly serious but the charges will have to be balanced with certain other factors like the period of incarceration which the Appellant has undergone and the likelihood period within which the trial can be expected to be finally concluded. The apex court inter-alia held as under:-

“9. We have to balance the nature of crime in reference to which the appellant is facing a trial. At the same time, the period of incarceration which has been suffered and the likely period within which the trial can be expected to be completed, as is informed to this Court that the statement of PW-1/defacto complainant has still not been completed and there are 298 witnesses but indeed may counter-affidavit that it may examine only 100 to 105 witnesses but indeed may take its own time to conclude the trial. This fact certainly cannot be ignored that the appellant is in custody since 6-7-2012 and has completed nine-and-half years of incarceration as an undertrial prisoner.”

“10. This Court has consistently observed in its numerous judgments that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial is imperative and the undertrials cannot indefinitely be detained pending trial. 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 him on bail.”

“11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, the period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.”

13. The paramount considerations which are to be kept in mind are the gravity of the offence, antecedents of the accused, the likely period possibility of timely trial, and the likelihood of the accused fleeing away from the cause of justice.
14. IO has stated before the court that the material witnesses have already been examined. Even as per the status report the role of the present petitioner is different from that of Suchit @ Golu who caught hold of the hands of the deceased. It is also different from accused Daulat who hit the mouth of the deceased and accused Rahul who stabbed a knife at the neck of the deceased Pardeep Jindal.
15. Undoubtedly, the offence of murder is a serious offence. In the present case, the record reveals that the case is based on circumstantial evidence.
16. The court is required to see the prima facie case at this stage. The court cannot meticulously examine the facts. The probative value of the witnesses cannot be seen at this stage. It is settled law that when the



case is based solely on circumstantial evidence, the chain of circumstances has to be so complete that it leaves no reasonable ground for any other conclusion except for the hypothesis of the guilt of the accused person. The petitioner has been in custody since 21.09.2020. The petitioner is stated to be 25 years of age and overall conduct is also satisfactory. Further, there are no previous criminal antecedents.

17. Taking into the prolonged detention, the petitioner is admitted to bail on furnishing a personal bond of Rs. 25,000/- with one surety of the like amount to the satisfaction of the concerned court/MM/CMM/Duty MM with the following conditions:
 - a) the Petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
 - b) the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;
 - c) the Petitioner shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case;
 - d) the Petitioner shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times; and
 - e) In case of a change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
18. Needless to say that any observation in the present order will not be tantamount to the expression of an opinion on the merits of the case.



19. Application stands disposed of.
20. A copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JULY 9, 2024/AR

DINESH KUMAR SHARMA, J