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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1724/2024**

DURGA PRASAD

.....Petitioner

Through: Mr. Aditya Aggarwal, Mr. Ankit
Mutreja, Mr. Manas Agarwal, Ms.
Pooja Roy and Mohd. Yasir,
Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Aashneet Singh, APP for State
with Insp. Yunus Javed, P.S. Gazipur.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

10.07.2024

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1. By way of present application, the applicant seeks regular bail in FIR No. 417/2017 registered under Section 302 IPC at P.S. Ghazipur.
2. Learned counsel for the applicant states that applicant is incarcerated since 23.11.2017. He further submits that till date 25 witnesses have been examined out of the total 31 witnesses cited by the prosecution. It is submitted that since the trial will take a long time, the applicant was released on interim bail in the meantime and has not misused the concession. He further submits that there are no other material witnesses remaining to be examined. It is further submitted that the CDR location of the present applicant is also not at the spot of the incident. Lastly, it is submitted that applicant's name has figured in the disclosure statement and there is no eye witness cited by the prosecution.
3. Learned APP for the State has vehemently opposed the bail



application by contending that in the present case, main accused namely *Vijay @ Munna* had an affair with one *Kavita*, wife of deceased/*Mithilesh Ojha*. The deceased came to know about the illicit affair on which co-accused *Vijay @ Munna* conspired with the present applicant to eliminate the deceased. He submits that the incident relates to 17.11.2017 and the FIR came to be registered on the next day i.e. 18.11.2017 when the body of the deceased was recovered. It is submitted that as per the prosecution case, the deceased was coming on his bicycle when he was stopped by the co-accused *Vijay @ Munna* as well as the present applicant. His bicycle was parked by the present applicant and he was made to sit in the car of the co-accused whereafter they consumed alcohol mixed with stupefying substance. He submits that the deceased died due to strangulation. As per the post-mortem report, the cause of death is due to shock and haemorrhagic shock due to cut throat injuries that were sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature and fresh in duration. The injury No.1 was caused by ligature, injury No. 2 was caused by blunt force and injury No. 3 caused by sharp edged weapon. It is submitted that during the investigation, on the joint disclosure of co-accused persons, the articles seized were sent to FSL for scientific opinion. The FSL Report, as extracted in the Status Report, is reproduced hereinbelow :-

7. That the exhibits of the case were sent to FSL for scientific opinion. The result of the DNA examination received as "DNA profile generated from the source of exhibit '1' (Blood guaze piece of deceased), '4a' (shirt) '4b' (Baniyan) '4c' (Baniyan) '4d' (Pant with belt) '5' (blood guaze piece of deceased) '6a' (knife) and '6b' (handkerchief). However, DNA profile could not be generated from the source of exhibits. '2' (blood stained earth). On STR analysis, it was found that the



profile generated from the source of exhibit '1' (blood guaze piece of deceased) '4a' (shirt) '4b' (Baniyan) '4c' (Baniyan) '6a' (knife) and '6b' (handkerchief) matching with the profile generated from the source of exhibits '5' (blood guaze piece of deceased). The copy of the FSL report is annexed herewith as Annexure-A (Colly).

4. Besides above, the prosecution has also cited one *Ashok Kumar* who has testified that it was the present applicant who had parked the bicycle of the deceased on 18.11.2017 near the house of Ashok Kumar at NOIDA. The said bicycle has also been identified by the wife of the deceased who has been examined as PW2. Further, the CDR location of the present applicant is also near the spot. He submits that the CDR location of the mobile tower is near Dallupura, the place of incident. CAF Application form was collected which established the ownership of mobile phone of the applicant.

5. I have heard the learned counsels for the parties and perused the material available on record.

6. In the present case, though there is no eye-witness however, articles seized during the investigation at the joint disclosure of both the co-accused persons, the same was sent to FSL and on DNA profile, the blood on the seized articles was matched with the blood of the deceased. Though, learned counsel for the applicant has contended that in the cross-examination of wife of the deceased, she has stated that bicycle of the same colour are available in the market however, she had identified the bicycle seized as that of her husband. Both the counsels have stated on the identification of bicycle however, considering the material placed on record and also the fact that only six witnesses remain to be examined so far who are formal in nature,



this Court is not inclined to admit the applicant on bail, consequently the present bail application is dismissed.

7. At this stage, learned counsel for the applicant prays that considering that the FIR pertains to the year 2017, the Trial Court may be directed to expedite the trial and in this regard he has also referred to the order dated 25.09.2023 wherein similar directions were sought and Trial Court was directed to expedite the trial.

8. Learned APP for the State, on instructions, states that efforts would be made to ensure that remaining witnesses are summoned and examined at the earliest.

9. Needless to state that the observations made hereinabove are only for the purpose of disposal of present bail application and which shall not have a bearing on the trial of the case.

MANOJ KUMAR OHRI, J

JULY 10, 2024

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