



2024:DHC:4089



IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 20th May, 2024

+

BAIL APPLN. 2499/2023

NIKHIL RAI HANDA

.....Applicant

versus

STATE OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant

: Mr. K. K. Manan, Senior Advocate with Mr. Luv Manan, Ms. Udit Bali, Mr. Rahul Gautam, Ms. Karmanya Singh Choudhary and Mr. Lavish Chandra, Advs.

For the Respondent

: Mr. Utkarsh, APP for the State with ACP Sunil Chauhan and SI Babu Lal, PS Naraina.

Mr. Jaspreet Singh Rai and Mr. Devinder Singh, Advs. for complainant.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure Code, 1973 seeking regular bail in FIR No.

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 24.05.2024
14:18:18

BAIL APPLN. 2499/2023

Page 1 of 11



2024:DHC:4089



135/2018 dated 23.06.2018, for the offences under Section 302 of the Indian Penal Code, 1860 ('**IPC**'), registered at Police Station Naraina.

2. On 23.06.2018, a PCR call was received regarding the dead body of a female lying at Vatika Wali Road. On receipt of the information, some police officers reached the spot and found the dead body of the victim. They took note of the injuries on the body of the deceased, including an incise wound on her neck which appeared to have been caused by a sharp weapon. It is alleged that tyre/ skid marks were also present on the road near the body of the victim.

3. During the course of investigation, the victim was identified as Ms. Shailja Dwivedi by her husband who informed that she had gone to the Base Hospital for physiotherapy in the morning. He also revealed his suspicion regarding the applicant having committed the crime. It is alleged that the applicant was seen at the Base Hospital before the crime.

4. The applicant was arrested on 24.06.2018 and his car was recovered from him. It is alleged that the same was used in the commission of the offence. The FSL team inspected his car and lifted certain exhibits that matched the DNA profile of the victim.

5. During the course of investigation, the knife allegedly used in the commission of the crime, the mobile phone of the victim and the clothes worn by the applicant at the time of the crime were also recovered at the instance of the applicant.



2024:DHC:4089



6. The applicant allegedly had a romantic affair with the victim from the year 2015. It is alleged that the applicant was forcing the victim to leave her husband and marry him, however, the victim refused. It is alleged that the applicant killed the victim using a knife. It is alleged that the applicant had also confessed the crime to Ms. Ravinder Sharma (PW 6), who was allegedly his other girlfriend.

7. The learned senior counsel for the applicant submitted that the applicant has clean antecedents and has been falsely implicated in the present case on the basis of conjectures and assumptions.

8. He submitted that the applicant had gone to the Base Hospital merely because his son was admitted there.

9. He submitted that the numbers associated with the victim were not registered in her name and were planted by the Investigating Agency to fabricate a false case against the applicant. He submitted that there is no concrete evidence that the applicant was having an affair with the victim or that he had asked the victim to leave her husband as the CDR merely indicates that there were regular conversations between them.

10. He submitted that the prosecution has concocted a story of an affair between the applicant and the victim to establish the motive behind the commission of the offence, however, the husband of the victim in his deposition has stated that the deceased did not have any illicit relation with the applicant.



2024:DHC:4089



11. He submitted that there is no eye witness in the present case and the evidence in the present case is only circumstantial in nature and the chain of evidence so as to implicate the applicant, in the absence of motive, is not complete.

12. He submitted that PW7, who was the shop owner from whom the alleged knife was purchased, deposed that he had never sold any knife to the applicant. Further, the recovered knife has no fingerprints of the applicant nor does it have the blood of the deceased.

13. He submitted that the testimony of Ms. Ravinder Sharma, to whom the applicant had allegedly confessed his involvement in the crime, is riddled with discrepancies and contradictions. He submitted that an extra judicial confession is even otherwise a weak piece of evidence in the absence of corroboration.

14. He submitted that the evidence of Ms. Ravinder Sharma was recorded after a delay of four days which raises questions regarding the veracity of her statement. He submitted that Ms. Ravinder is also an interested party as she had prior relations with the applicant.

15. He further submitted that the applicant was present in Delhi and at the Base Hospital even after the alleged incident which raises doubt regarding the applicant's involvement in the crime as no person would remain near the spot of crime after committing a murder.

16. He submitted that the chargesheet has been filed in the present case and primary witnesses have already been examined. He submitted



2024:DHC:4089



that the trial is likely to take long and in such circumstances, no purpose would be served by keeping the applicant in further incarceration.

17. The learned Additional Public Prosecutor for the State strongly opposed the grant of relief to the applicant. He submitted that the nature of the offences as alleged in the present case as well as the manner in which the offences were committed are heinous in nature.

18. He submitted that there is enough incriminating evidence to make out a *prima facie* case against the applicant.

19. He submitted that the exhibits which were lifted from the car of the applicant, including the hair and blood samples, were found to be similar to the DNA profile of the deceased. He further submitted that the FSL Report indicates that the tyre impressions found near the body of the deceased were similar to that of the car of the applicant.

20. He submitted that the weapon of offence, that is, a knife, was recovered at the instance of the applicant. He further submitted that the subsequent opinion on the weapon of the offence clearly stipulates that one of the injuries inflicted on the deceased could have been caused by the recovered knife.

21. He submitted that the mobile phone locations of the deceased and the applicant were under the same tower for some time on 21.06.2018, 22.06.2018 and 23.06.2018. He submitted that the CDR



2024:DHC:4089



and location of the deceased and the applicant thus supports the case of the prosecution.

22. He submitted that during the course of investigation, the connected witnesses, including Ms. Ravinder Sharma, were examined and they have supported the case of the prosecution.

23. He submitted that shortly before the death of the victim, the applicant had searched and watched the following suspicious videos on YouTube through his email ID -

- a. On 22.06.2018, at about 23:59 PM, he watched '5 Dangerous moves to win any street Fight, Defense against someone choking You' and 'How to break someone's Neck';
- b. On 23.06.2018, at about 00:02 AM, he watched 'How much force Does it take to break A bone?', 'Samurai Sword Techniques : Samurai Neck Break Throw' and 'Hit These 5 Points for knockout & Serious Injury in a Street Fight, Nerve Center Pressure points. He also searched for how to break neck'.

24. He submitted that one of the material witnesses, that is, Ms. Ravinder Sharma, had filed a complaint before the learned Trial Court alleging that the wife and mother of the applicant were constantly threatening her against deposing in the present case. He submitted that therefore there is a possibility that the applicant will misuse the liberty if he is enlarged on bail.

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 24.05.2024
14:18:18

BAIL APPLN. 2499/2023

Page 6 of 11



2024:DHC:4089



25. He further submitted that the other witnesses are army personnel who were subordinate to the applicant whereby the possibility of the applicant influencing them, if he is granted bail, cannot be ruled out either.

ANALYSIS

26. 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. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

27. The allegations in the present case are grave in nature. It is the prosecution's case that the applicant brutally murdered the deceased due to some discord in their romantic affair.

28. The applicant has denied the story of the prosecution and contended that there is no concrete evidence that he had any affair with the deceased. It is stated that the recoveries were planted and the applicant has been falsely implicated in the present case. It is pointed out that even the husband of the deceased during his examination has denied that the deceased had any affair with the applicant.



2024:DHC:4089



29. It is not disputed that the entire investigation stemmed from the alleged extra-judicial confession made by the applicant to PW6. It is trite law that an extra-judicial confession ought not to be relied upon unless the same inspires confidence and is corroborated. It is incumbent on the Courts to exercise extra caution while relying upon such extra-judicial confessions. It is contended by the prosecution that exhibits which were lifted from the car of the applicant, including the hair and blood samples, were found to be matching with the DNA profile of the deceased and the same corroborates the confession made by the applicant to PW6. It is, however, contended by the defence that the evidence was planted and there is no independent witness to corroborate recovery of exhibits from the car of the applicant.

30. At this stage, it cannot be denied that there is no eye witness to the incident. The applicant has contended that his presence at the Base Hospital, which is near to the place of incident, cannot be an evidence corroborating the involvement of the applicant in the crime since the applicant's son was admitted in the said hospital. The said fact is not denied by the prosecution.

31. 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 guilt of the accused person.

32. The probative value of the evidence would be considered at the time of final argument. At this stage, it cannot be presumed that the



2024:DHC:4089



prosecution has been able to prove the guilt of the applicant beyond reasonable doubt.

33. It is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to bail. [Ref: ***Ram Govind Upadhyay v. Sudarshan Singh: (2002) 3 SCC 598***].

34. The investigation in the present case already stands concluded with the filing of chargesheet followed by framing of charges and the material witnesses have already been examined by the learned Trial Court. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

35. The applicant was arrested on 24.06.2018 and as per the applicant, he has spent more than 4 years in custody. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time. In the opinion of this Court, no purpose would be served by keeping the applicant in further custody.

36. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeeb: AIR 2021 SC 712*** 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.

37. It is pertinent to note that the applicant was enlarged on interim bail and he surrendered on time. It is not the case of the prosecution



2024:DHC:4089



that the applicant misused the liberty in any manner. However, appropriate conditions ought to be put to allay the apprehension of tampering with the evidence and hampering the witness.

38. Considering the aforesaid discussion, in the interest of upholding the principles enshrined under Article 21 of the Constitution of India, this Court is of the opinion that the applicant has established a *prima facie* case for the grant of bail.

39. In view of the above, the applicant is 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 boundaries of 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 phones switched on at all times.



2024:DHC:4089



40. 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.

41. It is clarified that the observations made in the present order are only for the purpose of deciding the present bail application and shall not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

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

AMIT MAHAJAN, J

MAY 20, 2024

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 24.05.2024
14:18:18

BAIL APPLN. 2499/2023

Page 11 of 11