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

Date of decision: 27th SEPTEMBER, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 1793/2024**

MD SHAKIL

.....Petitioner

Through: Ms. Komal Chhibber, Mr. Satish
Sharma and Ms. Kajal Kadam,
Advocates.

versus

STATE (GOVT.OF NCT OF DELHI)

.....Respondent

Through: Mr. Aman Usman, APP for the State.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court seeking regular bail in FIR No.522/2020 dated 07.09.2020 registered at Police Station Bhalswa Dairy for offences under Section 302 IPC.
2. Material on record reveals that on 27.08.2020, an information was received vide DD No. 60A that a dead body of male aged around 40-45 years wearing a cream coloured shirt and black pant found lying inside a drain. The dead body was preserved in the mortuary of BJRM Hospital.
3. It is stated that efforts were made to identify the deceased and on 07.09.2020, at about 8 PM, one Abbas Khan S/o Kale Shah Khan R/o 8-14-119 Dasariwari Street, Gandhi Boma Minvi Peda, District Krishna, Andhra Pradesh identified the dead body as his father Kale Shah Khan and informed that his father was missing and he had lodged a missing report in Police Station Alipur vide DD No.81 on 28.08.2020. He informed the Police that



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he suspects that his father has been killed by some unknown person and on that basis, FIR No.522/2020 dated 07.09.2020 registered at Police Station Bhalswa Dairy for offences under Section 302 IPC was lodged vide DD No.60A on 27.08.2020.

4. On 08.09.2020, an information from Police Station Alipur was received regarding arrest of two accused persons, one Rinku S/o Phool Chand Sharma R/o Mohd Aasif's house, Street No.6, near Kuvewali Masjid, Mustafabad, North East Delhi and one Md. Shakil S/o Sadik R/o Hamja Ka Makan, Gali No.09, near Ram Ghat, Village-Wazirabad, Delhi, i.e., the Petitioner herein.

5. It is stated that accused Rinku's search led to a recovery of a Samsung golden colour phone having IMEI No. 354636097325313, 354637097325311. It is stated that both the accused, i.e., Rinku and the Petitioner herein, made a confession that they had looted this phone 10-12 days ago by strangulating a person to death near Bhalsawa Dairy landfill.

6. A disclosure of the accused including the Petitioner herein revealed that the accused persons gave a lift to the deceased in the Auto-Rickshaw owned by Shakil bearing No. DL 1 RZ 0192, and strangulated him to death.

7. Upon the said disclosure statement, the accused persons were taken on police remand and both of them identified the place from where the deceased boarded their auto and the place where they strangulated him to death.

8. Material on record reveals that one Akib Safdaq S/o Md. Mahboob Alam R/o H. No.335, Gali No.1, Nangli Poona, Delhi stated that he and the deceased worked in an office at Kheda Kalan Village and on 25.08.2020 at around 10:00 PM, he dropped Kale Shah Khan by his motorbike near



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Swarup Nagar Pul from where he took an auto in which two boys were already sitting and were talking and later on 08.09.2020, he identified the said two boys while they were in Police custody.

9. It is stated that CDR of phone number of the deceased Kale Shah Khan was obtained which confirms that the deceased used his mobile phone till his disappearance. The CDR of phone number of one of the witness Param S/o Jaipal R/o H. No.118, Gali No.20, Shiv Mandir, Wazirabad, Delhi was also obtained which revealed that after the deceased, he used his mobile phone. He disclosed that he purchased the said mobile phone from his friends, i.e., accused Rinku and the Petitioner herein, but he returned the same to them when they did not provide the bill of the said mobile phone to him. The CDR of the mobile phone of the Petitioner herein confirms his presence in the area of the incident.

10. It is stated that chargesheet has been filed in the matter and charges have been framed and the trial is going on. The Petitioner had approached the learned Trial Court for grant of regular bail which was rejected *vide* Order dated 20.03.2024. The Petitioner has now approached this Court for grant of bail by filing the instant bail application.

11. Learned Counsel for the Petitioner states that the Petitioner is in judicial custody since 09.09.2020 and hence he is in custody for more than four years. He stated that there are about 26 witnesses and only 8 have been examined so far.

12. Learned Counsel for the Petitioner has taken this Court through the depositions of the witnesses and more particularly the deposition of PW-2 Akib Safdak who was the witness to depose regarding the last seen theory. He states that PW-2 was the witness who had reported that he had seen the



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deceased board the auto rickshaw wherein the Petitioner herein and accused Rinku were present. In the cross-examination, he has categorically denied that he had told the Police that he had seen both the accused in custody of the Police or he had identified both the accused who had accompanied the deceased on the date of incident. He states that he cannot admit or deny whether the date of incident is 23.08.2020 or not. Learned Counsel for the Petitioner also states that Param who is alleged to have purchased the mobile phone of the deceased has been dropped from the case. He states that since all the prosecution witnesses have been examined, no useful purpose would be served in keeping the Petitioner in custody.

13. *Per contra*, learned APP for the State contends that the Petitioner is accused of a very serious crime under Section 302 IPC. He also states that the Petitioner can be punished even with death sentence and therefore the chances of the Petitioner fleeing from justice cannot be ruled out. It is also contended that neither the Petitioner nor his family members are residing at the address given by the Petitioner in the memo of parties, i.e., *Hamza Ka Makan, Gali No.09, Near Ram Ghat, Village Wazirabad, Delhi*, and in the absence of any known address, the chances of the Petitioner absconding and fleeing from justice is very high.

14. Heard learned Counsel for the parties and perused the material on record.

15. The parameters of grant of bail have been laid down by the Apex Court in several judgments.

16. In Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., **2010 (14) SCC 496**, the Apex Court has observed as under:-

“9. We are of the opinion that the impugned order is



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clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 :



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2002 SCC (Cri) 688] .]

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)

“13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

(See also State of Maharashtra v. Ritesh [(2001) 4 SCC 224 : 2001 SCC (Cri) 671] , Panchanan Mishra v. Digambar Mishra [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] , Vijay Kumar v. Narendra [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Anwari Begum v. Sher Mohammad [(2005) 7 SCC 326 : 2005 SCC (Cri) 1669] .)

17. The Apex Court in Neeru Yadav v. State of U.P., (2014) 16 SCC 508, has observed as under:-

“9. In this context, a fruitful reference be made to the pronouncement in Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 : 2002 SCC (Cri) 688 : AIR 2002 SC 1475] , wherein this Court has observed that grant of bail though discretionary in nature, yet such exercise cannot be arbitrary,



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capricious and injudicious, for the heinous nature of the crime warrants more caution and there is greater change of rejection of bail, though, however dependant on the factual matrix of the matter. In the said decision, reference was made to Prahlad Singh Bhati v. NCT of Delhi [Prahlad Singh Bhati v. NCT of Delhi, (2001) 4 SCC 280 : 2001 SCC (Cri) 674 : (2001) 2 SCR 684] and the Court opined thus : (Sudarshan Singh case [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 : 2002 SCC (Cri) 688 : AIR 2002 SC 1475] , SCC p. 602, para 4)

“(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

10. In Chaman Lal v. State of U.P. [Chaman Lal v. State of U.P., (2004) 7 SCC 525 : 2004 SCC (Cri)



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1974] , the Court has laid down certain factors, namely, the nature of accusation, severity of punishment in case of conviction and the character of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and prima facie satisfaction of the Court in support of the charge, which are to be kept in mind.”

18. The aforesaid principles laid down by the Apex Court have been re-stated in several other subsequent judgments, viz., Anil Kumar Yadav v. State (NCT of Delhi), **(2018) 12 SCC 129** and Mahipal v. Rajesh Kumar, **(2020) 2 SCC 118**.

19. The Petitioner is accused of a very serious offence under Section 302 IPC. However, the only person who could depose that the deceased was last seen with the accused was PW-2 and PW-2 has turned hostile. PW-2 in his evidence had deposed that he do not remember the date of incident but it was in the month of August or September, 2020 and on the date of incident he took the deceased on his motorcycle from Khera Kalan and dropped him at Nangli Poona. In his cross-examination, he categorically denied the suggestion put to him that he had seen the deceased taking an auto-rickshaw or two boys accompanying him in the auto-rickshaw. He also denied the suggestion that he had seen the accused in the custody of Police on 08.09.2020 and after went on to state that he has not identified the two boys including the Petitioner as the same who accompanied the deceased on the date of incident.

20. There is no threat to the person who according to the prosecution had seen the deceased with the Petitioner. The auto-rickshaw driver is not to be examined. The person who had alleged to have purchased the mobile phone



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from the Petitioner which belonged to the deceased, at present, had been dropped and therefore there is no threat on him being tampered with. As far as CDRs are concerned, they are all in the custody of the Police and there is no threat of the Petitioner tampering with that evidence. The Petitioner is in custody since 09.09.2020, i.e., more than four years, and out of 26 witnesses only 8 witnesses have been examined so far and the trial will therefore take a long time to conclude.

21. The Petitioner has no antecedents and therefore the threat of the Petitioner committing the same kind of offence is ruled out. This Court has perused the nominal roll which shows that the conduct of the Petitioner in jail has been satisfactory. The nominal roll also indicates that as on 15.07.2024, the Petitioner has spent 3 years 10 months 7 days in custody, which means that as on date the Petitioner has spent more than four years in incarceration.

22. The apprehension of the prosecution that the Petitioner will flee from justice as he has no address can be allayed by imposing a condition on the Petitioner to identify an address in Delhi and satisfy the Police and the Trial Court that he would be residing in the said address which is being provided by the Petitioner.

23. Material on record indicates that the Petitioner was residing at *Hamza Ka Makan, Gali No.09, Near Ram Ghat, Village Wazirabad, Delhi*, but he had vacated the said premises about five years prior to the enquiry made regarding the address of the Petitioner.

24. In view of the above, this Court is inclined to grant the Petitioner regular bail on the following conditions:-

- i. The Petitioner shall furnish a personal bond in the sum of



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- Rs.50,000/- with two sureties of the like amount, one of them being a relative of the Petitioner, to the satisfaction of the Trial Court.
- ii. The Petitioner shall furnish an address to the Trial Court where he would reside and the same would be verified by the Investigating Officer before the satisfaction of the Trial Court is recorded.
 - iii. The Petitioner shall appear before the concerned Police Station on every Monday, Wednesday and Friday at 10:00 AM and shall be released by 11:00 AM after completing all the formalities.
 - iv. The Petitioner shall not leave the city of Delhi without the prior permission of the Trial Court.
 - v. The Petitioner shall surrender his Passport, if any, with the Trial Court.
 - vi. The Petitioner shall attend all dates of hearings before the Trial Court and failure to attend even one date of hearing would entail the cancellation of bail granted to the Petitioner unless the Petitioner had filed an application for exemption from personal appearance before the Trial Court.
 - vii. The Petitioner shall not tamper with any evidence or contact the family members of the deceased directly or indirectly and more particularly the Complainant.
25. With these observations, the bail application is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

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