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

+ **BAIL APPLN. 1831/2024**

ASHOK KUMAR SHARMA

.....Applicant

Through: Mr. M.S. Arya, Adv.(VC)

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr.Raghuinder Verma, APP for the
State with Inspector Karmveer Singh,
PS Kalkaji

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

23.09.2024

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CRL.M.A. 24400/2024

1. The present application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the Applicant for grant of regular bail in FIR No. 0638/2023, under Section 302 IPC, registered at PS: Dayalpur. Chargesheet has been filed under Sections 302/ 201/120B IPC.
2. Briefly stated that the case of the prosecution as set up in the status report is that on 27.09.2023, information that "*Yaha ek lady ka gala kat diya hai age-60-65*" was received in PS. The police reached on the spot that was C-150, Gali No.7, Nehru Vihar, Delhi-94 where in the inner room, a body of an elderly lady was found lying on the bed which was in the pool of blood was identified as Shivkala w/o Late Ishwar Lal, address as mentioned above age 65 years. The deceased



was having a deep injury mark was seen on the head of the deceased woman and there was a lot of blood on two pillows, the bedsheet and the women's clothes. Enquiry reveals that the deceased was living alone in her house and has three daughters and had no son. Investigation reveals that the elder daughter Meena w/o Gajendra lives in Karawal Nagar, younger Renu W/o Guddu was living in Jalandhar Punjab and the youngest daughter Chintamani W/o Imtiaz lives with her husband and two children at a distance of about 50 meters from the house of the deceased.

3. During the course of the investigation, the scene was photographed and inspected by the crime and FSL team, and the lifted exhibits were taken into police possession through seizure memos, in which a sickle like tool was also found at the spot. During the course of the investigation, a photocopy of a GPA was found under the mattress on the bed of the deceased and apart from this, an application given by the deceased/Shivkala to the DCP North East Delhi on 04.06.2011 was also found in which Shivkala/deceased had informed about evicting her daughter Chintamani from her land/property. During analysis of multiple CCTV cameras, a suspected very young boy was seen roaming outside the house of the deceased from around 7.00 PM to 10.30 PM. in a suspicious manner who was identified as F, and was apprehended on 13.10.2023 who on interrogation accepted that he had killed Shivkala on instruction of Chintamani and the present Applicant.
4. The F was found to be JCL and made a disclosure statement that he knew the present Applicant who is a property dealer and F disclosed



that the Applicant had offered Rs.2,00,000/- for killing the deceased. Chintamani allegedly also made the payment to F. During the course of the interrogation, Chintamani also made a confessional statement and stated that her mother has given a plot of 50 Sq. ya. Nagar to her both sisters and she herself lived in this house of 25 Sq. yd. and ran a grocery shop which is costly as situated on the wide road. AS Chintamani resides in a rental premises with her husband and since last year she was demanding her share in property from her mother but she was not giving any reply and was avoiding the same. Due to this reason she was angry with her mother. She asked her neighbour, namely Ashok who is a property dealer, to somehow get the house of her mother sold but Ashok replied that without the consent of her mother, the Chouse can't be sold. She tried her level best to get her mother ready to sell her house but she became annoyed and said that even after selling the house, she will not give her any share. She discussed the same with Ashok who was ready to purchase the house for Rs.60 lakhs, after removing her mother from the way. Chintamani asked Ashok to do this work, who told about the boy namely F" and further repeated the story of killing of her mother on 26-09-2023 as explained by the F. On the next day (27-09-2023) at about 8:30 in the morning she came to the house of her mother and took out the Scissors and a weapon like a sickle from there. At that time her mother had died. Thereafter she again came there at around 11 AM and shouted that her mother had been murdered by someone. Ashok had called the Police so that no one could raise a doubt upon them. On the same day, she threw out the sharp pointed weapon in the garbage



but the Scissors was hidden by her in bed and same was recovered on the instance of the accused Chintamani on 13-10-2023, from the room of her house at Gali No. 7, Nehru Vihar about which she said that this was the weapon by which her mother was murdered.

5. During the course of the investigation, the present applicant was arrested and he also made a disclosure statement.
6. Learned counsel submits that except the disclosure statement of co-accused and the present applicant, there is no evidence with the prosecution to connect the applicant/accused for the offence. The applicant is stated in the custody since September, 2023. The case is at the stage of charge.
7. Learned APP for the State submits that the evidence against the present applicant is in the form of conspiracy. Learned APP submits that the present applicant was the master mind of the conspiracy.
8. The co-ordinate bench of this Court in ***Amit Pratap & Anr. v. State***, 2011 SCC OnLine Del 5062, inter-alia held as under:-

“6. Merely on the basis of disclosure statements of the co-accused and the Petitioners before the police which are inadmissible in evidence, I find that no charge under Section 364A/120B IPC is made out against the Petitioner. The law is well settled that the confession of an accused before the police officer or in police custody is inadmissible as held in Aghnoo Nagesia v. State of Bihar, AIR 1966 SC 199 and Khatri Hemraj Amulakh v. State of Gujarat, AIR 1972 SC 922.”

9. Further, at this stage, apart from the complicity of the applicant, the other parameters for grant of bail are also required to be considered. A co-ordinate bench of this Court in ***State (NCT of Delhi) v. Sanjeev Kumar Chawla***, 2020 SCC OnLine Del 1970 after considering



various judgments of the Hon'ble Supreme Court has summed up the principles governing grant of bail. It was inter-alia held as under:-

“31. The principles governing grant of bail which the courts ave to consider can be enumerated, though not exhaustively, as under:-

a) The gravity and severity of the offence and the nature of accusation;

b) Severity of punishment;

c) The position and status of the accused vis-à-vis the victim and the opportunity to approach the victims/witnesses;

d) The likelihood of the accused fleeing from justice;

e) The possibility of tampering with the evidence and/or the witnesses;

f) Obstructing the course of justice or attempting to do so;

g) The possibility of repetition of the offence;

h) The prima facie satisfaction of the court in support of the charge including frivolity of the charge;

i) The peculiar facts of each case and nature of supporting evidence.”

10. The goal of judicial custody is to ensure that the accused is present for the trial rather than to punish them. It could be beneficial to refer to the Apex Court's views in ***Vinod Bhandari v. State of Madhya Pradesh***, (2015) 11 SCC 502, wherein it was inter-alia held that:

“12. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not



supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. Reference may be made to decisions of this Court in Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42 : 2005 SCC (Cri) 489] , State of U.P. v. Amarmani Tripathi [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] , State of Kerala v. Raneef [State of Kerala v. Raneef, (2011) 1 SCC 784 : (2011) 1 SCC (Cri) 409] and Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397].”
(Emphasis Supplied)

11. The Court is at the stage of bail is only required to see the prima facie case. The Court has to see that there is legally admissible evidence on the ground to the points towards the guilt of the applicant. In the present case the admittedly, there are only disclosure statement of co accused of the JCL, co accused of Chintamani. Allegedly, the present applicant has also made a confessional statement. The facts of case that disclosure statement of confessional has to be appreciated during the trial, no recovery has been effected.
12. Taking into account the facts and circumstances of the present case, the applicant is admitted to regular bail on furnishing a personal bond of Rs.50,000/- with one surety of the like amount to the satisfaction of the learned MM/Duty MM/CMM, subject to the following conditions:
- a. The applicant shall remain available on his mobile number- (9868584121) which he undertakes to keep operational during the



aforesaid interim bail period.

b. The applicant shall also report and mark his appearance/attendance before duty officer on first Friday of every Month at 05:00 PM at P.S. Dayalpur, North East Delhi.

c. The applicant shall remain available on H.No. C-174, Gali NO. 7, Nehru Vihar, Dyalpur, North East Delhi and shall not leave NCT of Delhi during this period without the permission of the learned Trial Court.

d. the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;

e. the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.

f. In case of 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.

13. In view of the above, the present application stands disposed of.

14. Copy of the order be sent to the concerned Jail Superintendent for information and compliance.

15. Copy of this order be given *dasti* under the signature of court master.

DINESH KUMAR SHARMA, J

SEPTEMBER 23, 2024

Pallavi/ht