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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1892/2024 & CRL.M.A. 16596/2024,
CRL.M.A. 16597/2024

DHARMENDER YADAVApplicant
Through: Ms. Sushma Sharma, Mr.
Girish Kumar Sharma, Mr.
Dhruv Kumar Sharma, Mr.
Jitender Kumar Sharma,
Ms. Aayushi Gaur and Mr.
R. Sahil, Advs.

versus

THE STATE NCT OF DELHIRespondent
Through: Mr. Ajay Vikram Singh,
APP for the State with SI
Sanjay, PS Mehrauli.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
05.08.2024

1. The present bail application is filed seeking regular bail in FIR No. 1728/2016 dated 21.12.2016, registered at Police Station Mehrauli, for offences under Sections 307/34 of the Indian Penal Code, 1860 (IPC).
2. The case of the prosecution is that the victim was attacked by four unidentified persons. During the course of investigation, statements of eye-witnesses were recorded and CCTV footage was also analysed.
3. The prosecution alleged that the accused persons, namely, Pankaj Sharma and the present applicant, were at the spot during the incident. The applicant was arrested on 03.01.2017 and is in

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custody since then.

4. This Court, by order dated 18.07.2024, had admitted the co-accused Pankaj Sharma on bail. It was noted that the alleged CCTV footage, which allegedly shows the accused persons to be the assailants, has never been placed before the learned Trial Court as evidence. The same was also informed to have not been ever sent to FSL.

5. It was also noted that the eye-witness of the incident (PW-4), in his testimony, had stated that the incident was witnessed by him from his balcony. He, however, stated that there was complete darkness and he could not identify the assailants.

6. The learned Additional Public Prosecutor for the State submits that the applicant is also involved in other cases and does not have clean antecedents.

7. It is not disputed that the present case was registered more than seven years ago.

8. Admittedly, the applicant was involved in cases which were also committed more than seven years back. The same cannot be made a ground for denying bail to the accused on the ground of him being involved in multiple cases.

9. Concededly, no other case has been registered pursuant to the registration of the present FIR.

10. Even otherwise, the Hon'ble Apex Court in in the case of ***Prabhakar Tewari v. State of U.P. : (2020) 11 SCC 648*** had observed that mere pendency of several criminal cases against the accused cannot itself be the basis for refusal of bail. The same can be a factor, however, cannot a sole basis for refusal of prayer of bail.

11. On being asked, it is pointed out that despite the fact that



more than seven and a half years have elapsed since the arrest of the applicant, only eight out of the twenty prosecution witnesses have been examined.

12. The trial is likely to take considerable period of time. The Hon'ble Apex Court in the case of *Union of India v. K.A. Najeeb*: AIR 2021 SC 712, has 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.

13. 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. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

14. In the opinion of this Court, no purpose would be served by keeping the applicant in further custody.

15. Considering the aforesaid discussion and without commenting further on the merits of the case, the applicant is directed to be released on bail (if not in custody in any other case) on furnishing a bail bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, 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 phone switched on at all times.

16. 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.

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

18. The bail application is allowed in the aforementioned terms. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

AUGUST 5, 2024

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