



2024:DHG:671



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 22nd January, 2024*+ **BAIL APPLN. 2910/2023**

ZAHID HASSAN

..... Applicant

Through: Mr. Syed Hasan Isfahani
& Mr. Parvez Zaidi,
Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Pradeep Gahlot, APP
for the State with SI Akhil
Chaudhary, PS Seelampur**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of regular bail in FIR No. 337/2022 dated 23.07.2022, registered at Police Station Seelampur for offences punishable under Sections 302/201/392/397/411/34 of the Indian Penal Code, 1860.

2. The facts in brief which led to the registration of present FIR are as follows:

2.1 On 22.07.2022, information *vide* DD No.82 was received wherein the caller/complainant (Kasif Hasan) informed that Zakir Hussain (maternal uncle of the complainant) had not been answering calls for the past two to three days. Upon visiting his residence, the complainant noticed a strong and unpleasant smell emanating from Zakir Hussain's house.



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2.2 On receiving the phone call, the police officials reached the spot, that is, Gali No. 7, Gautampuri, Delhi and on inspection, the double-door fridge, which was tied with a plastic rope was opened, where the dead body of Zakir Hussain was found.

2.3 The present FIR was registered on the statement of the complainant for investigation into offences under Sections 302/201 of the IPC.

2.4 In the post-mortem of the deceased, the cause of death was stated to be *“shock as a result of craniocerebral damage consequent upon blunt force impact to the head”* and time since death was stated to be *about three days*.

2.5 During the course of investigation, based on the footage retrieved from CCTV cameras which were installed on both sides of the building T-9, Gautampuri, it was found that on 21.07.2022 at about 12:54 hours, one person came to the deceased's house and left the gate opened, and at about 13:21 hours, another person entered the house and closed the gate. On further investigation, it was revealed by the complainant and Mohd. Muneer (son of the deceased) that the first person seen in the CCTV footage is Abid Hussain, who is the brother of the deceased.

2.6 Abid Hussain was apprehended on 23.07.2022. On interrogation, he admitted to the murder of his brother Zakir Hussain, with assistance from applicant. Abid also confessed to taking cash, jewellery, and property documents from Zakir's residence. Following Abid's disclosure statement, applicant was

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apprehended on the same day at Brahmampuri Pulia, and subsequently arrested.

3. The chargesheet in the present case is filed before the Learned Trial Court, against the accused persons under Sections 302/201/392/397/411/34 of the IPC, and subsequently, charges have been framed.

4. The bail application preferred by the applicant before the learned Trial Court was dismissed by order dated 06.06.2023.

5. The learned counsel for the applicant submits that the chargesheet in the present case has been filed, and charges have been framed by the learned Trial Court. Hence, the custody of the applicant is not required.

6. The learned counsel submits that no direct role can be attributed to the applicant in committing conspiracy with the accused Abid Hussain to murder his brother. He submits that the applicant was arrested solely based on a disclosure statement made by the main accused namely, Abid Hussain.

7. The learned counsel submits that neither the Investigating Officer nor the witnesses were able to identify the applicant based on the CCTV footage, which is part of the evidence placed on record. He submits that the clothes worn by alleged person in the CCTV footage are different from what has been seized by the Investigating Officer.

8. Lastly, he submits that the applicant has been in incarceration since 24.07.2022, has clean antecedents and as per the nominal roll, his conduct has been satisfactory.

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9. On the other hand, the learned Additional Public Prosecutor for the state submits that the allegations against the applicant are grave and serious and the defences taken by the applicant are a matter of trial and cannot be looked into at the time of deciding whether the applicant is entitled to be released on bail. He submits that the applicant is actively involved in the heinous offence of murdering the deceased to rob him.

10. The learned APP submits that the applicant is accused of having committed the murder of the deceased in connivance with the main accused Abid Husain, with the intention to rob money and other valuable articles from his house. He submits that an amount of ₹1.5 lakhs, stolen jewellery and property documents were recovered from the black bags, at the instance of the present applicant, which allegedly belonged to the deceased. He further submits that the clothes worn by the applicant during the commission of the offence, were also recovered from the same bags.

11. He submits that as per the CDR, the accused persons were in regular touch with each other, and the locations of their mobile numbers were found to be near the place of incident, on 21.07.2022 at about 1:00 pm, which corroborates the CCTV footages.

12. The allegation against the applicant is allegedly of being an accomplice to the co-accused person in the murder of Zakir Hussain. *Prima facie*, substantive evidence exists delineating the motive underpinning the commission of the alleged offence.

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13. The Hon'ble Supreme Court in catena of judgments has consistently emphasised the factors to be taken into account when considering bail application, which include: (i) the nature or gravity of the offense; (ii) the character of the evidence and circumstances unique to the accused; (iii) the likelihood of the accused evading justice; (iv) the potential impact of the release on prosecution witnesses and its societal repercussions; and (v) the probability of the accused engaging in tampering.

15. The postmortem report of the deceased clearly establishes that the deceased was beaten to death with as many as 7 injuries caused by blunt force, which are ante-mortem, and in the ordinary course of nature, sufficient to cause death. Subsequent to committing the alleged offence, accused persons attempted to conceal evidence by relocating the deceased's body from the place of occurrence, hiding it inside a refrigerator, and securing it with a plastic rope. The actions of the applicant clearly indicate heinous nature of the crime.

16. It is pointed out that the applicant is captured on CCTV footage, entering and leaving the house of the deceased around the time of the alleged incident. The clothes and the cap worn by the accused during the time, as seen in the CCTV footage, have been seized by the police authorities at the applicant's behest. The call detail records (CDR) of the accused persons, at this stage, clearly shows that the applicant and co-accused were in regular touch at the contemporaneous time. The geographical locations of their mobile devices were determined in close proximity to the *locus delicti* on 21.07.2022, at approximately



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1:00 pm, thereby corroborating the evidence recovered from the CCTV recordings.

17. It is evident that the grant of bail should not be arbitrary or whimsical. The Hon'ble Supreme Court in *Neeru Yadav v. State of U.P. : (2014) 16 SCC 508*, where the Court, while setting aside the bail order, made the following observation:

“16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that liberty is a priceless treasure for a human being. It is founded on the bedrock of the constitutional right and accentuated further on the human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilised society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilised. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to the rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or

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caprice. It has to be guided by the established parameters of law.”

18. Being conscious of the fact that individual liberty holds immense significance, it is incumbent upon the Courts to examine and evaluate, *albeit* briefly, factors such as the *prima facie* case, the severity of the crime, and the accused’s likelihood to tamper with evidence, among other considerations.

19. The charges in the present case have already been framed and the allegations, at this stage, cannot be termed as frivolous. The credibility of the defences asserted by the applicant would be assessed during the trial.

20. The trial is at a nascent stage and the witnesses are yet to be examined. The possibility of the applicant interfering and intimidating the witnesses, at this stage, cannot be ruled out.

21. Accordingly, taking into account the submissions made by the learned counsel for the parties, and material available on record, this Court is of considered opinion that *prima facie*, there are serious allegations against the applicant which at this stage cannot be said to be without any material.

22. Considering the facts and circumstances of this case, this court is not inclined to grant bail to the applicant at this juncture.

23. It is made clear that the observations made in the present case are only for the purpose of considering the 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.

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24. In view of the above, the present bail application is dismissed.

AMIT MAHAJAN, J

JANUARY 22, 2024

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