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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN.2027/2024**

KAMAL KISHORE @ LALAJI

.....Petitioner

Through: Mr. Nitin Saluja with Ms. Simran
Khurana and Ms. Sanskriti Bansal,
Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Satish Kumar, ASC for the State
with Insp. Rizwan, P.S.: Karawal
Nagar.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

27.08.2024

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This matter has been received due to non-availability of the Roster Bench.

2. By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No.162/2012 dated 18.05.2012 registered under section 302 of the Indian Penal Code, 1860 ('IPC') at P.S.: Karawal Nagar, Delhi. Consequent upon completion of investigation, offences under sections 201/34 of the IPC have been added *vide* charge-sheet dated 04.08.2012.
3. Notice on this petition was issued on 03.06.2024; whereupon Status Report dated 25.07.2024 has been filed.
4. Mr. Nitin Saluja, learned legal-aid counsel appearing on behalf of the petitioner submits, that the incident in question dates back to 17.05.2012, consequent whereupon FIR dated 18.05.2012 was registered *inter-alia* against the petitioner for the offence under



section 302 IPC and charge-sheet dated 04.08.2012 was filed in the matter soon thereafter.

5. Mr. Saluja argues, that the *petitioner is about 80 years of age*; and has been in judicial custody for about *08 years and 07 months* as per Nominal Roll dated 23.08.2024 received from the Jail Superintendent.
6. Counsel submits, that though, out of 29 prosecution witnesses, 24 have now been examined, evidently the trial has been inordinately delayed.
7. Mr. Saluja draws attention to order dated 11.10.2019 made by the Co-ordinate Bench of this court in BAIL APPLN. No. 1006/2019 whereby the prior bail application filed by the petitioner was dismissed, with the court observing that since only 18 out of 29 prosecution witnesses had been examined at that time and 11 witnesses were yet to be examined, no ground was made-out for grant of bail *at that stage*.
8. Counsel further submits that *vide* order dated 11.10.2019, the Co-ordinate Bench of this court had also directed the learned trial court to dispose-of the case as expeditiously as possible; however despite such direction, only 06 more prosecution witnesses have been examined from October 2019 till date; and that therefore it is unlikely that the trial would be completed anytime soon.
9. Mr. Saluja also draws attention to the observation made by the Supreme Court in its recent judgment in ***Sheikh Javed Iqbal vs. State of U.P.***¹, in which decision the Supreme Court has emphasized the

¹ 2024 SCC OnLine SC 1755



importance of guarding the right to life and personal liberty enshrined under Article 21 of the Constitution of India, which has been held to be overarching and sacrosanct. It is submitted that the Supreme Court has held that even in case of restrictive statutory provisions, a constitutional court cannot be restrained from granting bail to an accused person, if it finds that the right of the accused under Article 21 of the Constitution of India has been infringed.

10. On the other hand, opposing the grant of bail, learned ASC appearing for the State submits, that the petitioner is accused of having caught hold of the deceased when the latter was done to death by the other co-accused person; that the offence alleged is grave in nature; and the petitioner does not deserve the benefit of bail.
11. Upon a conspectus of the facts and circumstances of the case, what weighs with the court at this stage is that *firstly*, that proceedings before the learned trial court have been going-on with the filing of charge-sheet dated 04.08.2012 relating to an alleged incident of 17.05.2012; *secondly*, that despite a direction in order dated 11.10.2019 made by the Co-ordinate Bench of this court for expeditious trial, only 06 additional prosecution witnesses have been examined in about 05 years *i.e.*, between October 2019 till today and 05 more prosecution witnesses are yet to be examined; and *thirdly*, that the petitioner is now about 80 years of age, and is also stated to be in infirm health. Furthermore, nominal roll dated 23.08.2024 confirms that the petitioner has spent about 08 years and 07 months in judicial custody *as an undertrial*; that his jail conduct has been 'satisfactory'; and that he has no other criminal involvements.



12. The nominal roll also records that the petitioner has been released on interim bail on no less than 06 occasions between 2014 and 2021; and there is no allegation that he has either attempted to jump bail or has violated any other conditions of interim bail.
13. This court also notices the observations of the Supreme Court in *Sheikh Javed Iqbal* (supra), which *inter-alia* say the following :

“22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.”

14. Thus, on a balance of the facts and circumstances of the case, this court is persuaded to admit the petitioner – **Kamal Kishore @ Lalaji s/o Lt. Rama Prakash** – to *regular bail* pending trial, subject to the following conditions :
 - 14.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rupees Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
 - 14.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;



- 14.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 14.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
- 14.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating in writing.
- 14.6. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of bail.
15. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
16. The petition stands disposed-of in the above terms.
17. Other pending applications, if any, are also disposed-of.
18. Nothing in this order shall be construed as an expression of opinion on the merits of the pending trial.

ANUP JAIRAM BHAMBHANI, J

AUGUST 27, 2024

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