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

+ **BAIL APPLN. 3083/2023 & CRL.M. (BAIL) 1293/2023**

PARVEZ SIDDIQUI Petitioner

Through: Ms. Sambhavi, Advocate.

versus

STATE NCT OF DELHI AND ANR. Respondents

Through: Ms. Shubhi Gupta, APP for the State
with Insp. Sanjay Bhardwaj, Main IO and Insp.
Yogendra Kr., PS: Govindpuri.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

07.02.2024

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1. This application has been filed on behalf of the Applicant Parvez Siddiqui @ Parvesh S/o Shri Noor Alam under Section 439 Cr.P.C. seeking regular bail in case FIR No. 147/2018 dated 06.05.2018 registered under Sections 302/201 IPC at PS: Govindpuri. Charge Sheet was filed wherein Sections 120B/34 IPC were added.

2. As per the case of the prosecution, on 06.05.2018 at about 10:14 hrs, an information was received that a dead body was lying in Tughlakabad Fort and on reaching the spot one male dead body was found of a person roughly aged 20 to 30 years. There were multiple stab wounds and the body was also partly burnt. Despite efforts, the identification could not be done and a GD entry was made. During investigation, identification was done and it was revealed that the deceased was Neeraj S/o Bhagwan Das R/o H. No.- 1511, Nangla Gujran, Part-II, Near Holy School, Sector-22, Faridabad, Haryana.



Identification was done by the father of the deceased, who stated that his son Neeraj along with Manoj had gone to Delhi to buy electrical instruments but never came back. Eye witness i.e. Manoj joined investigation and stated that Neeraj was attacked by Shiv Kumar along with his three friends and one Komal and one of her friend. Komal sprinkled a liquid over the body and burnt the same. Shiv Kumar was the main accused as per the statement of Manoj. Shiv Kumar along with three other accused namely, Parvez Siddiqui (Applicant), Ravi and Sumit were arrested and sent to judicial custody. Two CCLs Komal and Rakhi were also apprehended and disclosed their involvement in the case.

3. It is further stated in the status report that the conspiracy was hatched by the Applicant with his girlfriend Komal to take revenge of her brother Shiv Kumar and after the incident, Applicant along with Rakhi and Komal can be seen coming from the Tughlakabad Fort jungle area in the CCTV footage installed near Gali No. 28, Tughlakabad Extension, Delhi. Weapon of offence i.e. knife as well as the mobile phone of the deceased were recovered at the instance of accused Shiv Kumar and the bottle containing petrol was recovered at the instance of accused Sumit. Charge Sheet was filed after completion of investigation. FSL report of the exhibits was placed before the Trial Court, where the matter is pending at the stage of prosecution evidence. 12 witnesses have been examined out of 26 cited witnesses.

4. Learned counsel appearing on behalf of the Applicant submits that the entire case of the prosecution rests on the testimony of the alleged eye witness PW-1 Manoj, who is the cousin brother of deceased Neeraj. However, from his testimony it is evident that he was not present at the



scene of crime and was only a planted witness besides the fact that there are material contradictions in the statements given by him under Section 161 Cr.P.C. and during examination-in-chief as well as cross-examination. In the statement under Section 161 Cr.P.C., Manoj stated that on 05.05.2018, Neeraj informed him that Komal and Rakhi were inviting him to Delhi for sightseeing and when the idea crossed his mind, he offered to join for fun. Komal had informed Neeraj about the meeting place near Tughlakabad Fort's entry gate on MB road. On reaching there, all of them bought entry tickets and entered the fort. While talking, Komal and Rakhi led Neeraj towards the jungle area behind the fort where Shiv Kumar and his three friends were waiting and Shiv Kumar grabbed Neeraj from behind, held him and attacked him with a knife. Neeraj fell down and Shiv Kumar's friends also attacked him with knives on his chest and stomach. Komal poured petrol from a plastic bottle on Neeraj's face and set him on fire using a matchstick. During this incident, one of Shiv Kumar's associates caught him and Manoj was extremely frightened. Seeing this horrifying incident, he managed to escape and reached MB road on foot from where he caught a bus and returned home. Out of fear, Manoj did not share this incident with anyone and after searching, Neeraj's family discovered the truth behind the murder. In his statement on 15.03.2022 during examination-in-chief, Manoj stated that Neeraj and he met Komal and Rakhi in front of the entry gate of Tughlakabad Fort and after purchasing tickets went inside. Komal and Rakhi took both of them towards the jungle. Thereafter, Manoj and Rakhi went in one direction and Komal took Neeraj in another direction. In the meantime, Shiv Kumar with his three associates followed Neeraj and Komal. One of the associates of Shiv Kumar caught hold of the neck of Neeraj and gagged



his mouth. Neeraj fell down and Shiv Kumar stabbed Neeraj multiple times on his chest and abdomen. Sumit and Ravi also gave repeated knife blows to Neeraj. Parvez caught Manoj strongly but he somehow rescued himself and came to his house taking a bus. Out of fear, he did not tell about the incident to anyone. Later, his statement was recorded by Police on two occasions, firstly, on 06.05.2018 and thereafter, on 12.05.2018. Police was making inquiries from all accused also on 12.05.2018 in Govindpuri police station. In cross-examination by the State on 15.03.2022, Manoj stated that his statement was recorded on 07.05.2018 by the IO. On being recalled for cross-examination on 12.01.2023, during cross-examination by the counsel for Shiv Kumar, Manoj stated that around 5-6 police officials had come to his house at Faridabad for taking him to the police station during intervening night of 08.05.2018 and 09.05.2018 and he reached police station at 02:45 AM. He further stated that he had gone to the police station on 12.05.2018 as he was called by the police officials for identifying the three assailants and that it was correct that he had not visited the police station on 12.05.2018 for knowing the status of the case. In contradiction, Manoj stated in his second statement recorded on 12.05.2018 under Section 161 Cr.P.C. that on 12.05.2018, he had gone to the police station to know the status of the case, where three friends of accused Shiv Kumar were being interrogated and he identified them as the ones who were present in Tughlakabad Fort.

5. The contention is that there are contradictions on material aspects which show that testimony of Manoj was false and either he was involved in the incident or he was a planted witness. It is inconceivable that being an eye witness to an alleged murder of a relative, one would not disclose the incident to anyone for three days and wait for the police to call him and that



too knowing well that the family of Neeraj was desperately looking for him and making efforts to find about his whereabouts. It is further submitted that upon reading the contents of Charge Sheet dated 01.08.2018 and supplementary charge sheet dated 04.03.2019, no role has been ascribed to the Applicant in the overt act of alleged stabbing or burning. Heavy reliance on the CCTV footages is misplaced as the Applicant is not seen in the first footage and the second footage is of a fast-food joint at Kalkaji, which only shows the presence of the Applicant in the joint with his friends and this fact alone cannot be a pointer to commission of an offence by him. No recovery has been made from the Applicant or at his instance, even as per the case of the prosecution. All material witnesses have been examined and there is no question of the Applicant tampering with evidence or threatening or intimidating the witnesses. Applicant has been in custody for over 5 years and 14 witnesses remain to be examined, which are only formal witnesses and the trial is not likely to conclude in the near future. Applicant has been granted interim bail in the past and has never misused the concession granted by the Courts. Admittedly, Applicant has no criminal antecedents.

6. *Per contra*, learned APP submits that the nature of allegations is serious and the offence committed is grave. Heavy reliance is placed on two CCTV footages and it is urged that in the first footage, Applicant can be seen exiting to the main road from a gali coming from the direction of the jungle area in the Tughlakabad Fort and in the other, he is clearly visible standing inside a fast-food joint with a friend. Pertinently, footages reveal that the Applicant was present in and around the scene of crime close to the time of the incident, which shows his involvement in the crime.

7. It is further submitted that PW-1 Manoj is an eye witness to the



incident and has supported the case of the prosecution. He has identified the co-accused as well as the Applicant, who according to him was the one who had caught hold of Manoj while Neeraj was being stabbed and prevented Manoj from coming to the aid of the deceased. Applicant refused to undergo TIP in the fear that his involvement would be exposed. Manoj did not know the Applicant before the incident and therefore, there was no animosity or rivalry between them so as to motivate Manoj to falsely depose against the Applicant. Applicant is attempting to seek advantage from the fact that Manoj did not report the incident for three days, however, this cannot help the Applicant as Manoj has explained during his examination-in-chief that it was out of fear that he did not intimate anyone of the incident. Insofar as the alleged discrepancies in his testimonies are concerned, the statement of Manoj was recorded by the police in 2018 whereas he deposed before the Trial Court in the year 2022 i.e. after a gap of four years and with passage of time, minor discrepancies are only natural. Reliance is placed for this proposition on the judgment of the Supreme Court in ***State of Uttar Pradesh v. Naresh and Others, (2011) 4 SCC 324***. 14 witnesses are yet to be examined and there are chances that if released, Applicant may abscond.

8. I have heard learned counsel for the Applicant and the learned APP for the State.

9. Before proceeding to examine the rival contentions of the Applicant and the State, it is imperative to look at the parameters that the Court is required to take into account at the time of considering a bail application. From the judgments of the Supreme Court on the subject, this Court in ***State (NCT) of Delhi v. Sanjeev Kumar Chawla, 2020 SCC OnLine Del 1970***, has culled out certain principles and the reading shows that apart from



gravity and severity of the offence and complicity of the Applicant, there are other factors which ought to be taken into account while taking a decision on an application for bail. Relevant paragraph from the judgment is as follows:-

“33. The principles governing grant of bail which the courts have 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. A perusal of the testimony of PW-1 Manoj, the sole alleged eye witness shows that there are contradictions as his statements on certain material particulars made under Section 161 Cr.P.C. and during the trial are at variance. While at the initial stage, he stated that Komal and Rakhi had led Neeraj towards the jungle area, later in the examination-in-chief he improvised to state that Komal and Rakhi took both Neeraj and him to the jungle. There is contradiction on the description of the incident on how Neeraj was attacked. There is also contradiction in the dates on which his statements were recorded by the police. In the statement under Section 161 Cr.P.C., Manoj stated that the police recorded his statements on 06.05.2018



and 12.05.2018 while in the cross-examination, according to him, his statement was recorded on 07.05.2018 and yet again, in contradiction he later stated that the police had taken him to the police station during the intervening night of 08.05.2018 and 09.05.2018. As far as 12.05.2018 is concerned, again there is contradiction as on one occasion he stated that he had gone to the police station on 12.05.2018 as he was called by the police to identify the assailants and on the other hand, he stated that he had gone to inquire of the status of the case. Being a friend and relative of the deceased Neeraj, his conduct of remaining silent for three days after the alleged incident and not reporting the same even to his own family or to the family of the deceased is an unbelievable and an unnatural conduct, particularly, when he knew that the families were on a desperate look out for Neeraj. This Court is conscious of the fact that the probative value of the testimonies of the witnesses and/or their credibility is the domain of the Trial Court in the first instance, however, at this stage, this Court cannot gloss over the alleged discrepancies. Evidence relating to CCTV footages is a matter of trial and at this stage, it is not possible to come to a conclusion one way or the other if the person seen in the first CCTV footage is or is not the Applicant, since the face of the Applicant is not visible. As a matter of record, Applicant has been in custody for over five years. All material witnesses including the sole eye witness of the prosecution have been examined and 14 formal witnesses remain to be examined and therefore, there is no question of the Applicant tampering with evidence and/or extending threats to or intimidating the witnesses. With 14 witnesses remaining to be examined, trial is not likely to conclude soon. Weapon of offence i.e. knife as well as the mobile phone of the deceased were recovered at the instance of accused Shiv Kumar and the



bottle containing petrol was recovered at the instance of accused Sumit and there is no recovery from the Applicant or at his instance. It is uncontroverted that Applicant has no criminal antecedents. As repeatedly held by the Supreme Court, the object of keeping a person in custody is to ensure his availability to face the trial and receive the sentence that may be passed and it is equally settled that at pre-conviction stage, there is a presumption of innocence. It is not the case of the prosecution that the Applicant is a flight risk.

11. Seen holistically, this Court is of the view that Applicant has made out a case for grant of regular bail. Accordingly, the Applicant is admitted to regular bail during the pendency of the trial, subject to his furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. He shall provide his mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;
- iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;
- iv. He shall not indulge in any criminal activity or communicate with or come in contact with the witnesses and/or any other person associated with the present case and/or intimidate them;



- v. He shall report to concerned IO once a month; and
 - vi. He shall appear on every date of hearing before the Trial Court unless exemption is sought and granted by the Court on any given date.
12. Nothing stated in this order shall tantamount to expression of an opinion on merits of the case.
13. Application is allowed and disposed of. Pending application also stands disposed of.
14. Copy of the order be forwarded to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

FEBRUARY 07, 2024/shivam