



\$~10

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

+ **BAIL APPLN. 2185/2024**

REHMAN@REHAN@SONU

.....Petitioner

Through: Mr. Faraz Maqbool, (DHCLSC), Ms.
Sana Juneja, Mr. Ishaan Phukan,
Advs.

versus

THE STATE (GOVT OF NCT) OF DELHIRespondent

Through: Ms. Priyanka Dalal, APP
Inspector S. Kumar, PS DBG Road

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

27.11.2024

%

1. This is a bail application filed under Section 439 read with 482 Cr.PC seeking regular bail in F.I.R No. 55/19 under Section 302 of IPC registered at Police Station DBG Road.
2. As per the FIR, one body of Mr. Sameer Sahil was found at Idgah roundabout opposite MTNL building. Thereafter, the police conducted investigation and one Mr. Umeed Malik who is PW-3 stated that the petitioner had informed him that he had committed the murder of Mr. Sameer Sahil.
3. Mr. Maqbool, learned counsel for the petitioner states that the petitioner is in custody since 02.04.2019 and only 11 out of 34 witnesses have been examined.
4. He further states that there is no evidence linking the petitioner with the incident and the only evidence linking the petitioner with the evidence is



the statement of PW-3. In examination in chief of PW-3, he completely resiled from his earlier statement of informing the police that it was the petitioner who had committed the alleged offence.

5. Learned APP submits that the recovery of the weapon i.e. Knife (carrying the blood stains of the deceased) used in the offence is at the instance of the petitioner.

6. My attention is drawn to a judgment of the Hon'ble Supreme Court in ***Manjunath and Others Vs. State of Karnataka, 2023 SCC OnLine SC 1421*** wherein it was held as under:-

25. The next aspect is the recovery of the alleged weapons, we have noted the particulars thereof while discussing the findings of the Trial Court. Such recoveries were discarded by the trial court stating that the clubs were recovered from a place accessible to the public and, the chopper and the rods were recovered from a house where other persons were also residing which compromises the sanctity of such recovery and takes away from the veracity thereof.

26. Further discovery made, to be one satisfying the requirements of Section 27, Indian Evidence Act it must be a fact that is discovered as a consequence of information received from a person in custody. The conditions have been discussed by the Privy Council in Pulukuri Kotayya v. King Emperor and the position was reiterated by this Court in Mohd. Inayatullah v. State of Maharashtra, in the following terms:—

“12...It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact,



in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only “so much of the information” as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word “distinctly” means “directly”, “indubitably”, “strictly”, “unmistakably”. The word has been advisedly used to limit and define the scope of the provable information. The phrase “distinctly relates to the fact thereby discovered” is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery...”

(Emphasis supplied)

27. Prima facie, in the present facts, the 3 conditions above appear to be met. However, the Trial Court held, given that the discoveries made were either from a public place or from an area where other persons also resided, reliance thereupon, could not be made. We find this approach of the trial court to be correct.

7. The said judgment states that the recovery/discovery made either from a public place or from an area where other persons also reside cannot be relied upon. In the present case, the knife was recovered from an open area (land belonging to the Railways) which was freely accessible to the public and hence the recovery at the instance of the petitioner *prima-facie*, is doubtful.



8. Learned APP further submits that the CDR of the petitioner matches with the location where the dead body was found is inconclusive as the CDR gives a broad area of about 3 to 4 kms.

9. In the present case, admittedly the petitioner is a resident of the area where the CDR record shows the position of the petitioner.

10. Last and most importantly, the appellant has been in custody for a period of 5 years and 8 months.

11. For the said reasons, the petition is allowed and the petitioner is directed to be released on bail subject to the following conditions:-

- (a) The petitioner shall furnish a personal bond in the sum of Rs. 10,000/- (Rupees Twenty Thousand Only) with one surety of the like amount to the satisfaction of the concerned Trial Court;
- (b) The petitioner shall join investigation as and when called by the concerned IO, and the petitioner shall appear before the concerned Trial Court as and when the matter is taken up for hearing.
- (c) The petitioner shall provide his mobile number to the concerned IO, which shall be kept in working condition and switched on at all times. In case of change of residential address or contact details, the petitioner shall promptly inform the same to the concerned IO as well as to the concerned Trial Court.
- (d) The petitioner shall not leave the country without permission of the concerned Court during the bail period and surrender his passport, if any, at the time of release before the concerned Trial Court.
- (e) The petitioner shall not directly/indirectly try to get in touch



with the complainant or any other prosecution witness or tamper with the evidence.

12. Nothing stated hereinabove shall tantamount to an expression of opinion on the merits of the case.

13. Copy of this order be communicated to the concerned Jail Superintendent electronically for information.

14. The petition is disposed of accordingly.

JASMEET SINGH, J

NOVEMBER 27, 2024/sp

[Click here to check corrigendum, if any](#)