



2024:DHC:7763



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 07.10.2024

+ **BAIL APPLN. 2212/2024**

SUMIT

..... Applicant

versus

STATE NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Vikas Khatri, Adv. (through VC)

For the Respondent : Mr. Ajay Vikram Singh, APP for the State

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed seeking regular bail in FIR No. 34/2019 dated 25.01.2019, registered at Police Station DBG Road for offence under Section 302 of the Indian Penal Code, 1860 ('**IPC**').
2. Chargesheet in the present case has been filed under Sections 302 read with Section 120B/201/34 of the IPC.
3. On 25.01.2019, an information was received vide DD No. 14 - A that a dead body was found, behind a CNG pump near Arya Samaj



2024:DHC:7763



Mandir. It is alleged that the call was entrusted to SI Lalit, who along with other police officials, reached the place of the alleged incident where the dead body of a lady aged about 29-30 years was found lying near the CPWD wall.

4. The said lady, namely, Roshna@Rekha, was declared brought dead vide MLC No-73791/19 dated 25.01.2019. During the course of the investigation, the port-mortem of the deceased Roshna@Rekha was conducted vide post-mortem No-34/19 dated 25.01.2019 at LHMC Delhi. It is alleged that as per the post mortem report, the cause of death is "*Asphyxia as a result of homicidal manual strangulation, bansdola and traumatic asphyxia*".

5. During the course of investigation, the mother of the deceased (PW-6) stated that on 24.01.2019, her neighbour, that is, accused Urmila, had called the deceased to her home to clear the accounts of money, which accused Urmila had borrowed from the deceased. It is alleged that the CDR of the mobile number of the deceased was obtained and its analysis revealed that the last call on the mobile number was from the mobile number of accused Urmila. Accused Urmila was subsequently apprehended on 25.01.2019.

6. It is alleged that accused Urmila had taken a loan of ₹14,00,000/- from the deceased on interest and was unable to repay the same. It is alleged that the deceased was mounting pressure on her to repay the loan. It is alleged that the deceased was threatening to kill the son of the accused Urmila and usurp her flat. It is alleged that on



finding no way out of the predicament, accused Urmila and her sons – minor son (CCL ‘S’), and the applicant discussed the matter with the Hemant who was their friend, and hatched a conspiracy to kill the deceased.

7. It is alleged that as per their plan, on 24.01.2019, accused Urmila called the deceased to her home where co-accused CCL ‘S’ and Hemant were already present. It is alleged that when the deceased reached there, they all murdered the deceased by strangulating her. It is alleged that Hemant and Shubham (CCL) disposed of the body of the deceased in a deserted place on the scooty of co-accused Hemant. It is alleged that the applicant had noticed that the slippers and diary of the deceased were at his house, and he allegedly in an attempt to delete the evidence, disposed them. It is alleged that on the disclosure of accused Urmila, co-accused CCL ‘S’, co-accused Hemant, and the applicant were all arrested on 25.01.2019.

8. The co-accused Hemant was granted regular bail by this Court *vide* order dated 28.05.2024.

9. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that the present case is solely based on circumstantial evidence, and the role of the applicant in the present case, if at all, and as per the prosecution’s own stand, is of destruction of evidence. He submitted that the applicant was not present at the place of the incident during



the commission of the crime, and was working at his Dhaba when the incident took place.

10. He submitted that the co-accused Hemant, who was allegedly involved in strangulating the deceased, and disposing of the body of the deceased has already been admitted on bail by this Court, and prayed that the applicant be released on bail on the ground of parity.

11. He submitted that the case of the prosecution is entirely dubious since there is no eye-witness or CCTV footage of the entire incident. He submitted that the prosecution's own case is that the accused Urmila called the deceased to her home, which is situated at 4th floor in a highly congested and densely populated area. He submitted that it is entirely incredulous how no one noticed or saw the co-accused Hemant and CCL 'S' taking the body of a lady on a scooty. He further submitted that none of the CCTV cameras captured the image of both the co-accused carrying the body on scooty and dumping it near the Petrol Pump.

12. He submitted that the applicant has deep roots in society, and has clean past antecedents. He submitted that the applicant is languishing in custody since 25.01.2019, and the trial is not likely to conclude in the near future.

13. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposed the request for grant of bail to the applicant. He submitted that one diary and a pair of slippers belonging to the



deceased were recovered at the instance of the applicant. He submitted that the allegations against the applicant are serious in nature, and that the applicant actively participated in the crime.

14. 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. At this stage, it cannot be denied that there is no direct evidence against the applicant. It has also been averred that at the time of the commission of the offence, the applicant was admittedly not present at the place of the incident, and was working at his Dhaba during the time when the incident took place. The only allegation against the applicant at this stage is one of destruction of evidence. The arrest of the applicant has been effected on the disclosure statement of the accused Urmila. It is also the case of the prosecution that the applicant was in constant touch with the co-accused Hemant.

16. It is settled law that when the case is based solely on circumstantial evidence, the chain of circumstances must be so complete that it leaves no reasonable ground for any other conclusion except for the hypothesis of the guilt of the accused person.



17. Insofar as the allegations regarding the applicant's involvement in the alleged conspiracy to commit the offence is concerned, the same would be tested during the course of trial, and cannot be a ground to deny bail to the applicant at this stage. It is seen that the co-accused Hemant has already been admitted on bail by this Court *vide* order dated 28.05.2024.

18. Admittedly, all the material witnesses have been examined. There is no possibility of the applicant influencing the material witnesses in the event of him being enlarged on bail.

19. It is trite that long period of incarceration is an important factor to be kept in mind while considering the application for bail. It cannot be denied that the applicant was arrested on 25.01.2019 and the trial is not likely to conclude in the near future.

20. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeer*** : 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.

21. The continued incarceration of the applicant will result in the denial of his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in the near future.



22. 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.

23. In view of the above, without commenting further on the merits of the case, I am of the opinion that the applicant has made out a *prima facie* case for bail on the ground of parity.

24. Considering the aforesaid, 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 ₹20,000/- with two sureties of the like amount (one of the sureties shall be the family member of applicant), 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;



2024:DHC:7763



- d. The applicant shall provide the address where he would be residing after her release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.
25. 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.
26. 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.
27. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 7, 2024