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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 2980/2022 & CRL.M.A. 33326/2023

AFZAL ANSARI

.....Petitioner

Through: Mr. Hum Nashin Ahmed, Mr. Imran
Alam, Ms. Sharaf Hasan, Mr. Javed
Saifi, Ms. Farkhunda Kaunain and
Mr. Prakhar Singh, Advocates.

versus

THE STATE (GOVT. OF NCT DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State
with Inspector Chhote Lal, P.S.: Sarai
Rohilla.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

03.09.2024

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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. 17/2022 dated 07.01.2022 registered under section 302/201 of the Indian Penal Code, 1860 ('IPC') at P.S.: Sarai Rohilla, Delhi. Consequent upon completion of investigation, the offence under section 34 IPC has been added *vide* chargesheet dated 07.04.2022.

2. Notice on this petition was issued on 07.10.2022. Status report dated 05.12.2022 has been filed in the matter.
3. Nominal Roll dated 19.03.2024 has also been received from the concerned Jail Superintendent.
4. At the outset, Mr. Hum Nashin Ahmed, learned counsel appearing for the petitioner seeks leave to place on record additional documents, including the CAF in relation to a certain cellphone number, a copy of



the CDRs, the post-mortem report in respect of the deceased alongwith certain other documents in support of his bail plea.

5. The documents have been handed-up under cover of index dated 31.08.2024; and are taken on record.
6. Briefly, the case in which the petitioner is implicated arises from an incident on 06.01.2022, on which date the deceased/Abhishek is alleged to have been done to death by the persons arrayed as accused in the matter.
7. The date of offence is alleged to be 06.01.2022 at about 04:30 p.m.; the body of the deceased is stated to have been recovered on 07.01.2022 at about 01:30 p.m; and the petitioner was arrested on 09.01.2022.
8. Mr. Ahmed submits, that a perusal of the FIR would show that it was registered against 'unknown persons' and upon a combined reading of the FIR as well as chargesheet dated 07.04.2022 filed in the matter, in essence and substance, the prosecution is attempting to connect the petitioner with the offence on the basis that the petitioner and the deceased were both present at the bakery run by the petitioner under the name and style of 'Golden Bakery' situate in Gali No. 3, Padam Nagar, Delhi *at about 04:30 p.m. on 06.01.2022*.
9. Counsel submits, that the prosecution alleges in the chargesheet that there had been some dispute between the petitioner and the deceased *on 16.09.2021*, which had led to registration of a DD No. 6A dated 16.09.2021 under sections 102/103 of the Delhi Police Act, 1978 in which both the petitioner and the deceased had been arrested; and that



it was the said incident of 16.09.2021 that led the investigating officer to the petitioner's bakery.

10. Mr. Ahmed submits, that it is the petitioner's case that though the bakery is run by him, at the relevant time *i.e. at about 04:30 p.m. on 06.01.2022, the petitioner was not present at his bakery*. Besides, counsel for the petitioner submits, that the prosecution is seeking to establish the presence of the deceased at the bakery at the relevant time by connecting the deceased with a mobile No. 9667071528, which the prosecution says was being used by the deceased. This allegation is being supported by the prosecution based on a statement of one Afreen, who is the wife of the deceased, recorded on 08.01.2022 under section 161 Cr.P.C. Counsel submits however, that the CAF in respect of the said cellphone number, a copy of which has been appended with the additional documents placed on record today, shows that the said cellphone stands in the name of one Roopa, wife of Sanjeev Kumar, resident of Pratap Nagar, Sadar Bazar, Delhi; and the said cellphone therefore neither belongs to the deceased nor to his wife Afreen.
11. In the circumstances, it is argued that the 'last seen theory' sought to be propounded by the prosecution is baseless.
12. Mr. Ahmed further points-out, that as reflected in the post-mortem report dated 08.01.2022, the deceased is stated to have been sustained 15 injuries, several of which were incised wounds; but admittedly no weapon of offence has been recovered from, or at the instance of, the petitioner. Counsel submits that the cause of death has been opined as 'asphyxia resulting from manual strangulation and cerebral damage,



subsequent to blunt force impact over the head', none of which can be attributed to the petitioner.

13. Lastly, Mr. Ahmed submits, that the petitioner is a family man with a wife and 03 minor children; and has been in continuous custody from the date of his arrest, *i.e.* on 09.01.2022, without any respite. Counsel further points-out, that out of 36 prosecution witnesses, only 01 has deposed in the last more than 2-½ years.
14. On the other hand, opposing the grant of bail, Ms. Shubhi Gupta, learned APP appearing for the State submits, that the petitioner is also charged with the offence under section 34 IPC and would therefore be liable for the actions of all the co-accused persons; that there are a total of 05 accused persons in the case, 01 of whom is a child in conflict with law; that there was admittedly a history of dispute between the petitioner and the deceased, as is evident from DD No. 6A dated 16.09.2021 registered against them, in which they were also briefly arrested; and that all these aspects create serious suspicion against the petitioner.
15. Ms. Gupta accordingly argues, that the role of the petitioner in the murder of the deceased is co-extensive with the role of the other co-accused persons; and it is for the petitioner to prove the exculpatory evidence in his exclusive knowledge, in view of section 106 of the Indian Evidence Act 1872, which can only be done in the course of the trial.
16. Ms. Gupta further submits, that it has come-out during investigation that the petitioner had secreted away the DVR installed at his own bakery which contains incriminating CCTV footage, which was



subsequently recovered on the petitioner's disclosure statement and at his instance.

17. Ms. Gupta contends that the secreting-away of the DVR is an incriminating circumstance, since it is the prosecution's case that the murder may have happened *at the bakery* since the body of the deceased was found wrapped in plastic sheets used at the bakery, though the body was recovered from a different place.
18. Nominal Roll dated 19.03.2024 received from the jail shows that the petitioner has been in jail since 09.01.2022 and has thereby spent about 02 years and 02 months in judicial custody as of that date as an under-trial. The nominal role further shows that the petitioner's jail conduct has been 'satisfactory'; and that he is not implicated in any other criminal case.
19. On a *prima-facie* view of the material on record, it would appear that the only incriminating evidence recovered at the petitioner's instance is the DVR containing certain CCTV footage relating to the petitioner's bakery. The prosecution alleges that at the relevant time, *i.e.* around 04:30 p.m. on 06.01.2022, the petitioner was present at the bakery and so was the deceased, though the petitioner disputes his presence at the bakery at that time. In any event, the presence of the petitioner at the bakery at the relevant time, and the recovery of the DVR and the CCTV footage on the petitioner's disclosure statement, would not by itself prove the petitioner's guilt.
20. Furthermore, the earlier incident of 16.09.2021, leading-up to the registration of DD No. 6A dated 16.09.2021 against the petitioner and



the deceased would again, in and of itself, not be conclusive of the petitioner's involvement in the offence of murder.

21. Other things apart, it is not disputed that despite lapse of about more than 2-½ years; only 01 out of the 36 prosecution witnesses have so far deposed before the learned trial court; and that the petitioner has been in custody throughout. It is therefore highly unlikely that the trial would be completed anytime soon.
22. Upon a conspectus of the foregoing facts and circumstances of the case, this court is persuaded to admit the petitioner – **Afzal Ansari s/o Anwar Miyan** – to *regular bail* subject to the following conditions :
 - 22.1. 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;
 - 22.2. 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;
 - 22.3. If the petitioner has a passport, if any, 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;
 - 22.4. 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;

22.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing;

22.6. 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.

23. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

24. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.

25. The petition stands disposed-of in the above terms.

26. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 3, 2024/ak