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

+ **BAIL APPLN. 2359/2024**

CHANDULAL @ GULAB

.....Petitioner

Through: Mr. Hansraj Singh, Mr. Siddharth Singh, Mr. Shivam Verma, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for State and Insp. Sandeep Kumar, PS Timarpur.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
17.09.2024

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1. The present bail application has been filed under Section 439 IPC on behalf of applicant seeking regular bail in case FIR No. 463/2017 dated 01.11.2017 under Section 302 IPC registered at PS Timarpur, Delhi. Subsequently section 34 IPC was added at the time of filing of chargesheet. The applicant is in JC since 01.11.2017.
2. It has been stated that the present FIR was lodged on the statement of Bharat Verma i.e., the brother of the deceased. The complainant alleged that on 29.10.2017 he received an information that his brother Ram Singh has been admitted in hospital on which he reached Aruna Asif Ali Hospital, Delhi and found that the condition of his brother is serious. On 30.10.2017 deceased Ram Singh was shifted to Lok Nayak Hospital, Delhi. Bharat Verma alleged that during the treatment



deceased Ram Singh became conscious and stated that a quarrel took place and the injuries were caused by Saurabh during the quarrel. Subsequently, Ram Singh died and the present FIR No. 463/2017 was registered under Section 302 IPC at PS Timarpur.

3. During the investigation, postmortem of the deceased was conducted and as per the postmortem report the cause of death was “Death in this case is due to septicemia in an operated case of traumatic rectal perforation consequent upon force full penetrative trauma to the rectum. Injuries are due to forceful penetrative trauma. Rectal trauma was sufficient to cause death in an ordinary course of nature. Injuries are patterned contusions (Tram track contusion) and are caused by rod like solid cylindrical objects”. During the course of investigation Saurabh was arrested and disclosed that the present applicant was also involved in the case. Accused Saurabh stated that deceased Ram Singh had borrowed the mobile phone of the present applicant but failed to return the same. The co-accused stated that even deceased Ram Singh refused to pay the money and threatened the applicant. Thereafter, co-accused Saurabh and the applicant under agreement caught hold of deceased Ram Singh. Accused Saurabh brought a wooden stick and penetrated it into the anal of deceased. On the basis of this disclosure statement, the present applicant was arrested. The offending weapon wooden stick was recovered from behind the shop of the present applicant at the instance of co-accused Saurabh. Subsequently, the statement of Raju (PW-7) was recorded on 01.11.2017 and Raju stated that the deceased was beaten badly by co-accused Saurabh and applicant and he has often seen deceased along with accused persons at



the shop of the applicant.

4. After investigation, the charge-sheet was filed. The prosecution has examined 08 witnesses out of total 19 stated witnesses. PW-1 Ramji in his testimony deposed that during the treatment his brother Ram Singh regained consciousness and stated the Saurabh had given beating to him. PW-1 was cross-examined by learned APP for State. PW-2 Bharat Verma also deposed on the same line of testimony as of PW-1. PW-7 i.e., Raju also did not support the case of the prosecution and had turned hostile.
5. Learned APP for the State has vehemently opposed the bail application on the ground that the allegation against the applicant/accused are serious in nature. It has also been submitted that the trial is still taking place and if the applicant/accused is released on bail he may temper with the evidence. Learned APP has also submitted that the wooden stick was recovered from behind the shop of the applicant/accused.
6. *Per contra*, learned counsel for the applicant submitted that the only evidence against the present petitioner was disclosure of the co-accused and the statement of Raju recorded on 01.11.2017 i.e., around three days after the incident. Learned counsel submitted that even Raju has not supported the case of the prosecution. It has been submitted that applicant/accused is in custody since 2017 and no purpose would be served by keeping the applicant behind the bars.
7. Parameter for grant of bail during the course of trial is well settled. The court has to see the nature and gravity of the offence, likelihood of the evidence being tempered and other attending circumstances. The courts are slow to discuss the merits of the case at the stage of bail as it may



prejudice either of the parties. However, as argued by the learned counsel the evidence against the present applicant was in the form of disclosure statement of co-accused and the testimony of Raju. PW-7 has apparently not supported the case of prosecution. The evidence of the prosecution witnesses are yet to be appreciated in wholesome manner by the Ld. Trial Court. Therefore, at this stage, it would be unjust to enter into the minute appreciation of evidence.

8. The Applicant has not protracted the trial. It is also required to be considered that the Applicant is in jail almost for a period of 6 years and 9 months. There are no criminal antecedents against Applicant. It cannot be said that the Applicant is responsible for prolonging the trial for a period about 6 years.
9. In the case of ***Chintan Vidyasagar Upadhyay V/s. The State of Maharashtra*** in Special Leave to Appeal (Crl) No(s). 2543 of 2021 dated 17th September, 2021, the Apex Court granted bail to the Petitioner therein considering the fact that he was in custody for nearly 6 years. It was observed that the trial is in progress and 28 witnesses have been examined and 12 witnesses are yet to be examined. Further, in the case of ***Indrani Pratim Mukerjea V/s. Central Bureau of Investigation and Anr.*** (supra), the Supreme Court granted bail to the Petitioner/Accused, taking into account the fact that she was in custody for 6 and half years, and even if fifty percent of the remaining witnesses are given up by the prosecution, the trial will not complete soon.
10. The apex court in ***Ashim Alias Asim Kumar Haranath Bhattacharya alias Aseem Kumar Bhattacharya V/s. National Investigation***



Agency, (2022) 1 SCC 695, inter-alia held as under:

“9. We have to balance the nature of crime in reference to which the appellant is facing a trial. At the same time, the period of incarceration which has been suffered and the likely period within which the trial can be expected to be completed, as is informed to this Court that the statement of PW-1/defacto complainant has still not been completed and there are 298 witnesses but indeed may counter-affidavit that it may examine only 100 to 105 witnesses but indeed may take its own time to conclude the trial. This fact certainly cannot be ignored that the appellant is in custody since 6-7-2012 and has completed nine-and-half years of incarceration as an undertrial prisoner.”

10. This Court has consistently observed in its numerous judgments that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial is imperative and the undertrials cannot indefinitely be detained pending trial. 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 him on bail.”

11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.”

(Emphasis Supplied)

11. The High court of Bombay in **Ajit Bhagwan Tiwde V/s. State of Maharashtra** in Crl. Bail Application No.995/2021 dated 19th January, 2022, after taking into consideration several decisions of the Apex Court held that the nature of crime and long incarceration are required to be balanced and based on the consideration that long incarceration



affects the right of the Accused under Article 21 of the Constitution of India granted bail to the applicant/accused.

12. In the present case, it is a matter of record that the Applicant is in custody almost for a period about 6 years 9 months and the same remains undisputed. Therefore, since there is no likelihood of trial getting over within short span of time. This court considers that the Applicant can be granted bail on certain conditions.
13. Taking into account the duration of the detention of the petitioner in the custody, the petitioner is admitted to bail on furnishing a personal bond of Rs. 20,000/- with one surety of the like amount subject to the satisfaction of Ld. Trial Court subject to following conditions:
 - a) the applicant shall provide his mobile number(s) to the Investigating Officer and shall keep it operational at all times;
 - b) the applicant shall remain in touch telephonically with the Investigating Officer on his mobile number on the first Monday of every month;
 - c) the applicant shall under no circumstances leave India without prior permission of the Court concerned;
 - d) the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - e) In case of change of residential address and/or mobile number, the applicant shall intimate the same to the Investigating Officer/learned Trial Court by way of an affidavit.
14. However, it is made clear that the observations made herein are only to the extent of deciding the present application before this Court and



shall not tantamount to be any expression on the merits of the case.

15. In view of the above, the present application stands disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 17, 2024/AR/HT..