



\$~11

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

+ **BAIL APPLN. 3438/2023**

JITESH GUPTA

..... Petitioner

Through: **Mr.R.N. Sharma &
Mr.Himanshu Solanki, Advs.**

versus

STATE (GOVT OF NCT OF DELHI) Respondent

Through: **Ms.Priyanka Dalal, APP.
Insp.Bijender, PS Vijay Vihar
& Insp. Dheeraj Yadav, PS
Subhash Place.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

23.04.2024

%

1. This application has been filed by the Applicant under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for being released on Bail in FIR No.1079/2022 registered at Police Station: Subhash Place, North-West District, Delhi originally under Section 302 of the Indian Penal Code, 1860 (in short, 'IPC') (Later on Sections 120-B/34 of the IPC were also invoked).

2. It is the case of the prosecution that on 14.11.2022, at about 11:55 AM, a PCR call regarding the murder of a person was received at Police Station Subhash Place, vide DD No.34/A. It is alleged that thereafter, the police staff reached the spot of the incident. A dead body was found lying on the floor near the door of the flat, in a pool of blood. It is alleged that on local enquiry, the deceased was identified as Ranjit Lal (hereinafter referred to as the 'deceased'). It is



alleged that the wife of the deceased along with her three children was present at the spot and stated that three days ago she along with her children had left the house of the deceased after a quarrel and acts of domestic violence by the deceased. Thereafter, the dead body of the deceased was removed to Bhagwan Mahavir Hospital, Pitampura, Delhi, wherein the Doctor declared him as brought dead.

3. It is stated that thereafter inquiry was conducted from the family members of the deceased. The prosecution further alleges that during the investigation, CCTV cameras installed near the exit gate of the house were checked and two suspected persons were seen coming out from the house on 13.11.2022. The suspects were identified as Aditya @Baddi and Nitin @Tanne. Nitin @Tanne was interrogated and during the interrogation, he revealed that he along with Aditya @Baddi and the son of the deceased committed the alleged offence on the directions of Jitesh Gupta, that is, the Applicant herein. On the statement of Nitin, the other co-accused persons were also apprehended.

4. The prosecution alleges that from the CCTV footage and the CDRs of the accused, it was evident that the applicant was the mastermind of the offence of murder of the deceased. The weapon of the crime, that is, a danda was supplied by the applicant from his shop to the son of the deceased. He had also called the other accused, namely Nitin, to his shop, who, later went with the other co-accused and stood guard while the other co-accused committed the murder.

5. The learned counsel for the Applicant submits that the Applicant has been in custody since 14.11.2022. He submits that there



are no criminal antecedents of the Applicant.

6. The learned counsel for the applicant further submits that there is no evidence of the complicity of the Applicant in the alleged offence. He submits that the Applicant has been falsely implicated in the present FIR. He submits that there is no allegation of any enmity between the Applicant and the deceased, nor has any motive for the offence been attributed to the Applicant. He submits that the Applicant has been implicated only on the basis of conjectures and surmises.

7. On the other hand, the learned APP submits that in the present case, the CCTV footage recovered by the Investigating Officer shows the wife and the minor child of the deceased entering the shop of the Applicant, who was also the landlord of the deceased. Thereafter, the Applicant called the co-accused Nitin. She submits that the CCTV footage and CDRs further show that Nitin then contacted the co-accused Aditya. She submits that the CCTV footage also shows Nitin picking up a *danda* from the shop of the Applicant and taking it inside the shop, and after some time, the son of the deceased coming out with a Katta with the *danda* inside, and thereafter leaving along with the Nitin. She submits that later on, the son of the deceased brings back the *danda* in the same Katta and leaves it in the shop of the Applicant. She submits that the *danda* has been recovered from the shop of the Applicant and sent to the FSL for a report. She submits that, therefore, there is circumstantial evidence to show that the Applicant played the role of a mastermind in the planning and commission of the alleged offence.

8. She further submits that there are supporting CDRs of the co-



accused being in touch with each other around the time of the commission of the offence, especially with the Applicant.

9. In rejoinder, the learned counsel for the Applicant submits that the FSL report has since been received, and there is no presence of the blood reported on the *danda* seized from the shop of the Applicant.

10. I have considered the submissions made by the learned counsels for the parties.

11. As is evident from the above, the case of the prosecution hinges around the CCTV footage and the CDRs. Though the offence alleged against the Applicant is rather grave, at the same time, the nature of the evidence that has been collected and alleged against the Applicant, including the absence of any motive, persuades this Court to direct the release of the Applicant on Bail. The Supreme Court has cautioned that a detailed discussion on the evidence should not be done while considering an application of the accused seeking bail. This court is, therefore, restraining itself from commenting much on the same.

12. I am also guided by the submission of the learned counsel for the Applicant that the Applicant is aged around 45 years; has no criminal antecedents; and is a man having roots in the society. Therefore, there is no likelihood of him fleeing from the process of law.

13. It is also to be kept in mind that the purpose of keeping the accused in custody is only to secure his presence in the trial and not as a punitive measure to punish the accused. It has also been observed by the Supreme Court repeatedly that bail is the rule, while jail is an exception. The gravity of offence can also not be the sole criteria for



denying bail to the Applicant.

14. Accordingly, it is directed that the Applicant be released on Bail in FIR No. 1079/2022 registered at Police Station: Subhash Place, North-West District, Delhi on furnishing a personal bond in the sum of Rs.50,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- ii. The applicant shall not leave the NCT of Delhi without the permission of the learned Trial Court and shall also surrender his passport.
- iii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the Applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in similar or any other criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or the co-accused. In case the



Applicant is found involved in another case, it will be open to the prosecution to file an appropriate application seeking cancellation of his Bail in the present case as well.

15. Needless to state, any observation touching upon the merits of the case is purely for the purposes of deciding the question of grant of Bail and shall not be construed as an expression on the merits of the matter.

16. The application is disposed of in the above terms.

17. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

APRIL 23, 2024/rv/AS

Click here to check corrigendum, if any