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

+ **BAIL APPLN. 2463/2024**

PANKAJ SHARMA

.....Applicant

Through: Mr. Ajay Raghav, Adv.

versus

THE STATE NCT OF DEHLI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State along
with Mr. Prem Narain, Mr.
Hitesh Kumar Yadav, Ms.
Mohita Yadav, Mr. Ashish
Mishra, Advs.
SI Ashutosh Mishra, PS
Mehrauli.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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18.07.2024

**CRL.M.A. 20629/2024 (exemption from filing the certified
copies, dim annexures)**

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed for grant of regular bail in FIR No.1728/2016 dated 21.12.2016, for offences under Sections 307/34 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Mehrauli. Charges were framed against the applicant for the offences under Sections 302/396/120B of the IPC and Section 27 Arms Act, 1959.

4. The FIR was registered pursuant to a PCR call received on 21.12.2016 regarding the injured victim being taken to the hospital. It is alleged that upon inquiry it was revealed that the

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victim was attacked by four unidentified persons on 20.12.2016. A car was found in a damaged condition with blood inside the car. A weapon of offence, that is, a knife, was also allegedly lying on the rear seat of the said car. Thereafter, the victim succumbed to his injuries on 21.12.2016. It is alleged that during the course of the investigation, statement of the eye witness was recorded and CCTV footage was analysed. It is alleged that the applicant and the co-accused Dharmender Yadav could be seen at the spot during the incident. Pursuant to the same, the applicant was arrested on 03.01.2017 and is in custody since then.

5. The learned counsel for the applicant submits that applicant has been falsely implicated in the present case.

6. He submits that the CCTV footage which shows the applicant at the spot of the incident, though allegedly procured during the investigation, has never been sent to the Forensic Science Laboratory (FSL) for examination.

7. He submits that the same was also not produced before the learned Trial Court as evidence.

8. He further submits that the sole eye witness in his testimony has not identified the applicant to be one of the assailants.

9. The learned Additional Public Prosecutor for the State opposes the grant of bail to the applicant. He submits that the present case is one of robbery and murder.

10. He submits that if the applicant is convicted, he would be sentenced for life and no relief should be granted to the applicant in light of the heinous allegations.

11. He submits that the applicant was involved in other cases of robbery on earlier occasions as well.

12. I have heard the learned counsel for the parties and
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perused the record.

13. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

14. It is not disputed by the prosecution that the alleged CCTV footage which shows the applicant to be one of the assailants has not been produced before the learned Trial Court as evidence. The same was admittedly never sent to FSL.

15. The eye witness of the incident (PW4) had identified the applicant and two of the other accused persons during the TIP proceedings. In his testimony, he has stated that the incident was witnessed by him from his balcony. He has stated that he had heard the gunshot and also seen 3 - 4 people. He, however, further stated that there was complete darkness and he could not identify the assailants. He deposed that the police had discussed and shown him the photographs of the accused persons prior to the TIP being conducted.

16. The knife allegedly recovered from the seat of the victim's car does not contain any finger prints that could have been matched with the applicant's finger prints.

17. It is alleged that the applicant has been involved in other cases. However, admittedly, the said cases were registered more than seven years back and the applicant is on bail in those cases. An offence which was allegedly committed seven years back cannot be made a ground for denying bail to the accused on the

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ground of him being involved in multiple cases.

18. Even otherwise, the Hon'ble Apex Court in in the case of ***Prabhakar Tewari v. State of U.P. : (2020) 11 SCC 648*** had observed that mere pendency of several criminal cases against the accused cannot itself be the basis for refusal of bail. The same can be a factor, however, cannot a sole basis for refusal of prayer of bail.

19. On being asked, it is pointed out that despite the fact that more than seven and a half years have elapsed since the arrest of the applicant, only eight out of the twenty prosecution witnesses have been examined.

20. The trial is likely to take considerable period of time. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeeb: 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 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. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

22. The applicant is stated to have two minor children and a widow mother to be taken care of.

23. In the opinion of this Court, no purpose would be served by keeping the applicant in further custody.

24. Considering the aforesaid discussion and without commenting further on the merits of the case, the applicant is directed to be released on bail on furnishing a bail bond for a sum

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of ₹25,000/- with two sureties of the like amount, 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;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his 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

JULY 18, 2024

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