



2024:DHC:7764

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

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Judgment delivered on : 07.10.2024

+ **BAIL APPLN. 2474/2024****PUSHPENDER @ PUSHI**

..... Applicant

versus

STATE OF NCT OF DELH

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Hirein Sharma & Mr. Mohit Yadav,
Adv.

For the Respondent : Mr. Ajay Vikram Singh, APP for the State.
Insp. Mahendra Pratap, PS ODRS, Railway,
SI Santosh Kumar.

CORAM**HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present bail application is filed seeking regular bail in FIR No. 133/2017 dated 20.08.2017, registered at Police Station Old Delhi (Delhi Main) Railway Station, for the offence under Section 302 of the Indian Penal Code, 1860 ('IPC').

2. The brief facts of the case are that on 18.08.2017, information was received regarding the dead bodies of two females in Mahananda Express train. On receipt of information, the police officers reached the location and found the two bodies. One of the bodies was of a 57 year old lady whose neck had been tied with the knot of the pallu of her saree and blood and saliva were coming from her mouth. The



other body was of a 27 year old woman who was found lying on a seat in a different coach and froth was coming out from her mouth and nose. The driving license of the applicant was seized from the place of occurrence. The dead bodies were identified to be of a mother and daughter. The daughter was married to the applicant.

3. During the course of investigation, one Amit Sharma (PW1) was examined who had last seen the victims with a man at the platform. At his instance, the applicant was arrested in the present case on 20.08.2017 and is in custody since then.

4. During investigation, one Rakesh Kumar (PW 24), who was running a parking at railway station where the motor cycle of the applicant was parked, was also examined. In his testimony before the learned Trial Court, he turned hostile and stated that he had no knowledge of the present case.

5. The CDR of the applicant was procured and it was found that he was at Shahdara at the time of the incident. The motorcycle of the applicant was also seized.

6. The learned counsel for the petitioner submitted that the applicant is innocent and he has clean antecedents. He submitted that the applicant has been falsely implicated in the present case and there is no conclusive proof against him.

7. He submitted that no incriminating evidence has been found against the applicant and the driving license of the applicant was planted just to corroborate the last seen evidence.



8. He submitted that apart from the statement of Amit Sharma (PW1), there is no material to link the applicant to the present crime. He submitted that the testimony of PW1 is full of discrepancies and he has also stated that he knew policeman of Shahdara railway station prior to the date of incident which indicates that he was already in contact of the policeman. Further, he submitted that PW1 stated that he had seen the applicant in police station on 19.08.201, however, he has also stated that he joined the investigation on 20.08.2017.

9. He submitted that PW 24, who was made witness in the case to complete the chain of events, has turned hostile and not supported the case of the prosecution. He submitted that PW24 has also stated that his signatures were taken on blank pages which shows that the applicant has been falsely implicated in the present case.

10. He submitted that even though CCTV cameras are installed at the platform of the railway station, however, no CCTV footage was procured which casts a shadow of doubt on the case of the prosecution.

11. He submitted that the applicant has spent more than four years in custody and the matter is still at the stage of prosecution evidence. He submitted that the trial will take time to conclude and the applicant cannot be subjected to indefinite incarceration in such circumstances.

12. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submitted that the allegations levelled against the applicant are heinous in nature.



13. He submitted that PW1 has substantially supported the case of the prosecution and discrepancies in the statement of PW1, if any, cannot be prodded while considering the bail of the applicant.

14. He submitted that 24 out of the 37 listed prosecution witnesses have already been examined in the present case.

ANALYSIS

15. 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. However, at the same time, the long period of incarceration is also a relevant factor that is to be considered.

16. The allegations in the present case are grave and heinous in nature. It is the prosecution's case that the applicant brutally murdered his wife and mother-in-law. The case is tethered on the last seen theory and it is alleged that the victims were last seen with the applicant at the railway platform by PW1 and PW24. While PW24 has turned hostile, Amit Sharma (PW1), who sells water bottles at the concerned railway platform, had identified the applicant and supported the prosecution's case.

17. The applicant has denied the version of the prosecution and



contended that there is no cogent evidence in the form of CCTV footage to substantiate the allegations levelled against him. It is stated that the applicant has been falsely implicated in the present case and PW1 is a stock witness who was admittedly known to the police officers of the concerned police station prior to the incident. It is pointed out that there are certain discrepancies in the statement of PW1 as well who identified the accused on 20.08.2017, however, he had admittedly seen the accused at the Police Station a day earlier on 19.08.2017 and not said anything.

18. It is not disputed that the applicant was arrested in the present case at the instance of PW1 and the entire case is based on the last seen theory. It cannot be denied that there is no eye witness to the incident. One of the witnesses who had been listed by the prosecution to establish the presence of the accused at the railway station has turned hostile and denied that he ever ran any parking at the said station.

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

20. While the probative value of the evidence and veracity of the evidence of PW1 would be considered at the time of final argument, it is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to bail [Ref: ***Ram Govind Upadhyay v. Sudarshan***



Singh : (2002) 3 SCC 598].

21. The investigation in the present case already stands concluded. The applicant was arrested on 20.08.2017 and as per the nominal roll, the applicant has spent more than 4 years in custody. The trial is at the stage of examination of prosecution witnesses and the Status Report mentions that 13 witnesses are yet to be examined. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time. In the opinion of this Court, no purpose would be served by keeping the applicant in further custody.

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. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeer : AIR 2021 SC 712*** 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.

24. While it cannot be denied that the offence alleged against the applicant is heinous in nature, the Hon'ble Apex Court in the case of ***Javed Gulam Nabi Shaikh v. State of Maharashtra : 2024 SCC OnLine SC 1693*** has observed as under:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the



ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be."

25. 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.

26. It is pertinent to note that the applicant was enlarged on interim bail and he surrendered on time. It is not the case of the prosecution that the applicant misused the liberty in any manner. However, appropriate conditions ought to be put to allay the apprehension of tampering with the evidence and hampering the witness.

27. Considering the aforesaid discussion, in the interest of upholding the principles enshrined under Article 21 of the Constitution of India, this Court is of the opinion that the applicant has established a *prima facie* case for the grant of bail.

28. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, 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 phones switched on at all times.
29. 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.
30. It is clarified that the observations made in the present order are only for the purpose of deciding the present bail application and shall not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.
31. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 7, 2024