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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3550/2023**

MOHD. FARMAN Applicant

Through: Ms. Nursat Hossain, Adv.

versus

THE STATE (GNCT OF DELHI) Respondent

Through: Mr. Utkarsh, APP for the
State with SI Suresh
Kumar, SI Priyanka Rani,
PS New Usmanpur.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

28.02.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') for grant of regular bail in FIR No.08/2012 dated 06.01.2012, for offences under Section 363 of the Indian Penal Code, 1860, registered at Police Station New Usmanpur.

2. The FIR was initially registered for the offence under Section 363 of the IPC on a complaint made by the complainant, namely Ali Hasan *alias* Pappu, alleging that his son was missing.

3. During course of investigation, the complainant later informed that a call was received by him asking for ₹4,00,000/- as ransom. Police identified the caller as co-accused Rajesh, one of the labourers, who was working in the complainant's factory. Thereafter, co-accused Rajesh was arrested from the factory of the complainant. On interrogation, co-accused Rajesh confessed his involvement in the crime and disclosed the conspiracy to kidnap the complainant's son. The applicant and other co-

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accused persons were arrested on 08.01.2012 on the basis of the disclosure statement of co-accused Rajesh.

4. It is the prosecution's case that the accused persons had hatched a conspiracy to kidnap the victim for ransom. It is alleged that the victim was kidnapped by co-accused Babu Hasan and the applicant on 05.01.2012 between 8:30 PM- 9PM. It is alleged that after kidnapping the victim, the accused persons got scared when the victim threatened to complain to the complainant. It is alleged that the victim was strangled to death by the co-accused Babu Hasan while the applicant held the arms of the victim, whereas co-accused Anees Ahmed held the mouth of the victim and co-accused Rajesh held the legs of the victim.

5. It is also alleged that the body of the victim thereafter was packed in plastic bag and thrown in the drain. It is alleged that the co-accused Anees threw the clothes and shoes of the victim and made the call for ransom to the complainant. It is alleged that the body was recovered at the instance of the accused persons who took the police party to the drain.

6. When the complainant informed that he had received a call for ransom of ₹4 lakhs, Section 364A of the IPC was added in the FIR. Subsequently, Sections 302/120B/201/34 of the IPC were also added.

7. Chargesheet was filed against the applicant and other accused persons for the offences under Sections 302/363/364A/120B/201/34 of the IPC.

8. The learned counsel for the applicant submits that one of the co-accused persons, namely, Anees Ahmed, has already been granted bail, in Bail Application No. 2422/2023, by an order dated 01.09.2023. She submits that the role of the applicant is
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less grave than the said co-accused person, who is alleged to have made the ransom call and actively participated in the disposal of the body of the victim.

9. She submits that the applicant is in incarceration since 08.01.2012 and the trial is still not complete. She submits that still more than 8 witnesses are left to be examined.

10. She submits that while it has been alleged that the applicant had kidnapped the victim and restrained his hands when he was strangled to death, however, the said allegations have not been substantiated by any evidence by the prosecution. She further submits that the CFSL Report also doesn't support the case of the prosecution.

11. She submits that the applicant has been implicated in the present case merely on the basis of the disclosure statement of the co-accused Rajesh and other co-accused persons. She submits that the disclosure statements of the co-accused persons have not been corroborated and are thus inadmissible as evidence.

12. She further submits that the strand of hair found on the body of the victim belongs to co-accused Babu Hasan and not the applicant.

13. The learned Additional Public Prosecutor for the State opposes grant of any relief to the applicant. He submits that the maximum punishment for the offences under Sections 302 and 364A of the IPC is death.

14. He submits that the dead body of the deceased has been found at the instance of the co-accused persons, including the applicant.

15. He further submits that the applicant had failed to surrender after the lapse of the interim bail granted to him under the HPC guidelines, which led to initiation of proceedings under BAIL APPLN. 3550/2023

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Section 82 of the CrPC against him.

16. The learned counsel for the applicant, however, submits that the applicant had surrendered before the Court himself. She submits that the applicant is illiterate and had surrendered belatedly due to some confusion regarding the date of surrender as per the HPC guidelines.

17. She further submits that the summons and non bailable warrants issued to the applicant before initiation of the proceedings under Section 82 of the CrPC were not received by the applicant as he had shifted to Uttar Pradesh due to some family dispute.

18. The Hon'ble Supreme Court in the case of **Ram Govind Upadhyay v. Sudarshan Singh And Others: (2002) 3 SCC 598**, has enunciated the following guiding in regard to grant of bail:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the

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severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

19. The case of the prosecution, at this stage, *prima facie* seems to be based solely on the disclosure statements of the co-accused persons. The veracity of the said evidence would be tested during the course of trial. At this stage, from the material relied upon by the prosecution, *prima facie*, the non-involvement of the applicant in the alleged offence cannot be ruled out.

20. It is not denied that the applicant has been in incarceration since 08.01.2012, barring his interim bail under the HPC guidelines, and has spent a period of more than 10 years in custody. Even after 10 years, some witnesses are yet to be examined and the trial will likely take some time to conclude at the current pace.

21. 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.

22. It is also relevant to note that the role attributed to the



applicant, in any case, is not graver than that of co-accused Anees Ahmed who has already been granted bail by this Court.

23. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

24. In view of the above, the applicant is directed to be released on bail on furnishing a bond for a sum of ₹20,000/- 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. One of the sureties to be furnished by a family member of the applicant;
- b. 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;
- c. The applicant shall under no circumstance contact the victim's family members;
- d. The applicant shall under no circumstance leave the boundaries of Delhi without the permission of the learned Trial Court;
- e. The applicant shall appear before the learned Trial Court as and when directed;
- f. 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;
- g. 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;



h. The applicant shall report at the concerned Police Station on the first Saturday of every month between 5PM and 6PM.

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 way of 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

FEBRUARY 28, 2024
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