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

+ **BAIL APPLN. 2578/2024**

**RAHUL @ SAKA**

.....Petitioner

Through: Ms. Sakshi Sachdeva, Advocate.

versus

**THE STATE (GOVT. OF NCT OF DELHI)**

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State  
with Insp. Surender Singh, P.S.:  
Kanjhawala.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

**14.10.2024**

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No. 0269/2022 dated 04.04.2022 registered under sections 302/34 of the Indian Penal Code, 1860 ('IPC') and sections 25/27 of the Arms Act, 1959 at P.S.: Kanjhawala, Delhi.

2. Notice on this petition was issued on 24.07.2024; pursuant to which Status Report dated 05.09.2024 has been filed on behalf of the State.
3. Nominal Roll dated 28.08.2024 has also been received from the Jail Superintendent.
4. The court has heard Ms. Sakshi Sachdeva, learned counsel appearing for the petitioner; as well as Ms. Shubhi Gupta, learned APP appearing on behalf of the State at length.



5. At the outset, learned APP appearing for the State informs the court, that upon making enquiries, the Investigating Officer ('I.O.') has found that there is no next-of-kin of the deceased who could be heard in the present proceedings since his house has been found locked and the I.O. is not aware of the whereabouts of the wife or the son of the deceased.
6. Ms. Sachdeva submits, that as would be seen from a perusal of the subject FIR, it was registered against 'unknown persons' and the petitioner's name came to be involved in the matter only on the disclosure statement of co-accused Deepak, who is stated to have said that the petitioner was one of the persons who conducted a 'recce' of the place where the victim - Rameshwar Rana - was to be found and where he was ultimately done to death.
7. Learned counsel submits, that the prosecution case is that the deceased was killed since he was a witness in another case bearing FIR No. 203/2020 dated 15.06.2020 registered under sections 506/307/323/341/34 of the IPC and sections 25/27 of the Arms Act at P.S.: Kanjhawala, Delhi, to which section 302 IPC was added later-on. Counsel points-out however, that there is no allegation that the petitioner had anything to do with that other case.
8. Ms. Sachdeva argues, that the other evidence sought to be canvassed against the petitioner is that there is CCTV footage of the place where the petitioner is alleged to have done the recce along with other persons; but admittedly, that CCTV footage is not entirely 'clear' and therefore the petitioner has not been identified even in that footage.
9. Ms. Sachdeva submits, that on the other hand, the other 03 co-accused persons are seen on a motor-bike in the CCTV footage of the spot at



the time of the incident, and all three have been identified, but even as per the prosecution the petitioner is not one of them.

10. Learned counsel submits, that PW-6 Harjeet, the shopkeeper from whom the CCTV footage of the spot has been recovered; PW-7 Aman Rana, the son of the deceased; as well as PW-8 Ganesh, the owner of the motor-bike used in the incident, have all turned hostile in the course of the trial.
11. In this backdrop, Ms. Sachdeva argues, that it is not even the prosecution case that the petitioner was at all present at the spot at the time when the deceased was shot-dead; or that any recovery has been made from the petitioner; and the *only* evidence on which the prosecution case against the petitioner hinges is the purported disclosure statement of co-accused Deepak.
12. Learned counsel also argues, that the petitioner has been in judicial custody as an undertrial for about 02 years and 06 months, while only 08 out of the 40 prosecution witnesses have so far been examined. It is accordingly submitted, that it is unlikely that the trial will be concluded anytime soon and the petitioner deserves to be enlarged on regular bail.
13. On the other handing, opposing the grant of bail, Ms. Gupta submits, that the petitioner is liable for the acts of the other co-accused persons in view of section 34 of the IPC. Learned APP points-out, that the case involves a heinous offence since the deceased was a witness in another murder case and was done to death to prevent him from deposing in that case.



14. Ms. Gupta also submits, that it is noteworthy, that almost all prosecution witnesses have turned hostile, which is suggestive of the accused persons interfering in the trial.
15. Upon a conspectus of the facts and circumstances of the case, it is noted in particular that other than the disclosure statement of co-accused Deepak, there is no evidence cited by the prosecution insofar as the petitioner is concerned. Also, as per the nominal roll dated 28.08.2024, the petitioner has spent about 02 years and 06 months in judicial custody as an undertrial as of date; and though his jail conduct is stated to be 'un-satisfactory', he has already served the punishment meted-out to him in that respect. The nominal roll also shows that the petitioner has no other criminal involvements.
16. While, on the one hand, the petitioner has already spent about 02 years and 06 months in judicial custody as an undertrial, only 08 out of 40 prosecution witnesses have so far been examined and therefore it is unlikely that the trial will conclude any time soon.
17. In light of the aforesaid considerations, this court is persuaded to admit the petitioner – **Rahul alias Saka s/o Jai Bhagwan** – to *regular bail*, pending trial, subject to the following conditions :
  - 17.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount, at least one of which must be from a family member, to the satisfaction of the learned trial court;
  - 17.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at



any time and shall ensure that the number is kept active and switched-on at all times;

- 17.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 17.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial;
- 17.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
18. Since the petitioner is facing trial and would be appearing before the learned trial court from time-to-time, no reporting requirement has been imposed as a condition of bail.
19. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
20. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
21. The petition stands disposed-of in the above terms.
22. Pending applications, if any, also stand disposed-of.

**ANUP JAIRAM BHAMBHANI, J**

**OCTOBER 14, 2024/ds**