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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3627/2023**
VIKASH Petitioner

Through: Mr. Arvind Kumar Shukla, Mr.
Vivek Singh, Ms. Neena Shukla,
Ms. Shweta Mahajan, Mr. Amit
Kumar, Mr. Udit Chawla, Advs.

versus

STATE OF NCT OF DELHI Respondent

Through: Mr. Hemant Mehla, APP for State
with SI Neeraj PS KNK Marg Delhi

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

% **ORDER**
20.02.2024

1. The present petition has been filed under Section 439 Cr.P.C. read with Section 482 CrPC seeking regular bail in connection with FIR No. 127/2019 under Sections 302/394/411/120B/34 IPC registered at Police Station K.N. Katju Marg, Delhi.

2. The case of the prosecution as borne out from the status report is that on 08.04.2019, an information was received wherein it was informed that a theft had taken place and the mother of the caller has been strangled. During the investigation, the statement under Section 161 CrPC of the complainant namely, Sonam Saxena (daughter of the deceased) was recorded wherein she disclosed that on 08.04.2019, she went to meet her



mother at about 11.00 A.M. and left after 5 minutes as she forgot her purse at her home. When she was leaving, she saw a lady with 03 boys in the street who enquired about her mother's presence at home. Later on, at about 01.30 P.M. when she returned to her mother's house, she saw the main gate of the house was open and her mother was lying on bed who had been strangled with the help of *chunni* and the gold ornaments of her mother were missing.

3. The petitioner was arrested in the present case during the investigation on 10.04.2019.

4. The learned counsel for the petitioner submits that the complainant had given an interview to the media on 10.04.2019 and in the said interview she had clearly stated that she does not suspect any person. However, in her statement recorded under Section 161 CrPC she has mentioned that one lady and her 03 associates were standing outside the house of the deceased mother. Intriguingly, in her testimony recorded before the Court, she has named all the accused persons including the present petitioner.

5. He submits that there are material contradictions in the statement of the complainant recorded under Section 161 CrPC as well as her testimony. He invites the attention of the Court to the testimony of complainant (daughter of the deceased), who was examined as PW1, to contend that in her testimony she has specifically named the lady who was standing outside her mother's house as Richa Sharma and has also stated that Richa Sharma was present in the birthday party of her niece prior to the incident, which means that she was knowing accused Richa Sharma, whereas in the FIR the name of said Richa Sharma has not been mentioned.

6. He submits that in case the co-accused Richa Sharma was so close



and known to the PW1, it is not understandable as to why she has not been named in the FIR.

7. He also points out the contradiction in the testimony of the PW1 as regards the reason for coming back to her mother's house only to find her mother dead. In her testimony PW1 has stated she came to her mother's house but after leaving her mother's house she realized that she had left her purse at her mother's house, therefore, she came back; whereas in her statement under section 161 CrPC she stated that she had forgotten her purse at her home and after staying at her mother's house for 5 minutes when she was leaving for her house to get her purse, she saw one girl and three boys outside her mother's house. The relevant part of PW1's testimony reads thus:

*"... On seeing me, the above said three accused left here and there (idhar udhar ho gaye) and accused Reecha had asked me "aunty ghar par hai'. I replied her that 'yes' and then I went at my parent's home. I remained there for few minutes for about 5-10 minutes and then I left at my home that was F-6/25, Ground Floor, Sector-15, Rohini, Delhi as I was residing there at that time. **When I reached at my house, I realized that my purse remained/left at my mother's house, so I again went at my mother's house for taking the same and when I reached there I saw that the main iron gate of my parental house was found lying open and my mother was lying on the bed in the room of the house...**"*

The relevant part of the statement of the complainant u/s 161 CrPC reads as under:

*"... I reside at the above address along with my family, whereas my parents reside at G-9/179, G.F. Sec-16, Rohini, Delhi. My mother called me over phone on 07.04.2019 and asked me to visit her and I visited her house on 08.04.2019 at about 11.00 a.m. **I forgot my purse at my home hence, I stopped for 5 minutes at my mother's***



house. When I was going to take my purse from my aforesaid home, I saw a girl, who used to visit my mother's house and I don't know her name and address, standing at the gate of the street, along with the three boys. She asked me about my mother that is Aunty at home and the boys went towards the park after seeing me. I went to my house at Sector-15, Rohini, Delhi. When at around 1.30 p.m., I came at my mother's house, after taking goods from market, I saw that the iron main gate was open and my mother was lying on the bed. I called her; but, she didn't respond..."

8. Insofar refusal of TIP by the petitioner is concerned, the learned counsel invites the attention of the Court to the testimony of PW1, to contend that TIP was refused by the petitioner only for the reason that the present petitioner alongwith co-accused Richa Sharma and Sumit were shown to the witness (PW1) on 11.04.2019, when the police officials alongwith the accused persons had come to the house of the deceased mother of the witness.

9. Inviting the attention of the Court to the chargesheet, the learned counsel submits that with regard to the present petitioner, it has been mentioned in the chargesheet that the present petitioner was not possessing a telephone, accordingly no CDRs are available to establish petitioner's presence at the place of incident and he being in touch with other accused on the date of incident or prior thereto.

10. He submits that PW1 has also failed to identify some of the jewellery articles of her deceased mother. Further, PW1 in her chief examination has wrongly identified the present petitioner as Ashu and co-accused Ashu as Vikash i.e. the present petitioner.

11. He submits that the antecedents of the present petitioner are clean and the petitioner is in custody since 10.04.2019 and he has already spent



more than 04 ½ years in custody.

12. He, therefore, urges the Court to enlarge the petitioner on bail.

13. *Per contra*, learned APP has argued on the lines of the status report. He submits that the petitioner had refused TIP which gives rise to an adverse inference.

14. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have perused the record.

15. The daughter of the deceased, who was examined as PW1, is material witness through whom the prosecution wants to establish the identity of the accused persons, who according to the said witness were seen by her outside her mother's house on the date of incident. There is substance in the contention of the learned counsel for petitioner that PW1 had given different versions in her interview to the media; in her statement under section 161 CrPC and in her testimony recorded before the trial court, as regard her suspicion and identification of the accused person. There are other contradictions in the testimony of PW1 vis-à-vis her statement recorded under section 161 CrPC as noted in para no. 7 above.

16. The examination-in-chief of PW1 also reveals that the said witness wrongly identified the present petitioner as Ashu and co-accused Ashu as Vikash i.e. the present petitioner.

17. Intriguingly, the PW1 has also not named Richa Sharma in the FIR when it is borne out from her testimony that she was neighbour of her mother and was knowing her and she also had the occasion to see/meet her at the birthday of her (PW1's) niece.

18. It is the case of the prosecution in the chargesheet that the present petitioner was not possessing a telephone, therefore, there are no CDRs to



establish the petitioner's presence at the place of incident or to establish that he was in touch with co-accused on the date of incident or prior thereto.

19. It is trite that the probative value of the testimony of PW1 and the reliability of the said witness shall be seen by the learned Trial Court at the stage of trial. However, at this stage the contradictions in the testimony of PW1 which have been pointed out by the learned counsel for the petitioner cannot be ignored as the same have the potential of probabilizing the defence of the petitioner to an extent. To be noted that no other evidence or incriminating circumstance has been pointed out that corroborates the version of the prosecution. This coupled with the long incarceration of the petitioner tilts the balance in favour of the petitioner and furnishes a reason for granting bail to him.

20. *Prima facie* there also appears to be substance in the justification given by the learned counsel for the petitioner for refusal of TIP by the petitioner.

21. Further, the gravity of an offence is not the sole criteria for granting or rejecting a bail application. The other factors for granting of bail have to be borne in mind.

22. Undisputedly, the petitioner is in custody since 10.04.2019 and he does not have any criminal record. At this stage there is also a presumption of innocence in favour of the petitioner. The purpose of keeping an accused in custody is only to ensure his availability during the trial and to receive punishment in the event he is found guilty. An accused cannot be kept in custody for an indefinite period in case the conclusion of trial is likely to take long time.

23. The prosecution has cited as many as 38 witnesses, out of which only



06 witnesses have been examined, therefore, the conclusion of trial is nowhere in sight and in the facts and circumstances of the case, the petitioner cannot be kept in judicial custody for an indefinite period to await the outcome of trial. An ultimate acquittal of the petitioner with continued custody will be a travesty of justice.

24. Further, it is not the case of the prosecution in the status report that the present petitioner is at flight risk. Furthermore, since the testimony of the complainant has already been recorded, there is no possibility of the petitioner influencing the complainant in the event he is enlarged on bail.

25. Considering the aforesaid facts in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail on his furnishing Personal Bond in the sum of Rs. 25,000/- with one Surety Bond of the like amount subject to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide his permanent address, as well as, his mobile number to the IO concerned. The mobile number shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the witnesses.

26. The petition stands disposed of.

27. It is clarified that the observations made herein above are only for the



limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.

28. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

29. Order *dasti* under signatures of the Court Master.

30. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 20, 2024

N.S. ASWAL