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

+ **BAIL APPLN. 3861/2023**

**AJAY@PAHADI**

..... Petitioner

Through: Mr. Gaurav Kochar, Mr. Bharat  
Sharma & Mr. Dollar Jain,  
Advocates.

versus

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

..... Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for  
State.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**ORDER**

**22.03.2024**

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1. This is an application preferred on behalf of the Applicant Ajay @ Pahadi S/o Sh. Kishanlal under Section 439 Cr.P.C. seeking regular bail in case FIR No. 89/2019 dated 20.04.2019 registered under Section 302 IPC at PS: Shahdara.

2. As per the case of the prosecution, on 20.04.2019, a PCR Call was received at police station Shahdara regarding a dead body lying behind Metro Station Shahdara. On receiving the PCR Call, the then SHO Inspector Youdh Bir Singh along with Constable Ashok reached the spot and found an injured male unidentified dead body of a person aged about 40-45 years lying near the metro station. Crime spot was inspected and photographed by the members of the Crime Team. The body was sent to GTB Hospital and preserved in the mortuary and present FIR was registered.



3. It is stated in the status report that during investigation, one eye witness namely Anil Kumar Jadaun met the investigating officer near Shahdara railway station and informed that he worked as a junk picker and stayed in the nearby Godown at night. He also disclosed that on the intervening night of 19.04.2019 and 20.04.2019, between 11:00 PM to 12:00 AM, when he was going to urinate, he saw five boys robbing, beating and dragging one person who was screaming aloud and finally, they took the said person into the bushes from where he later heard a loud scream. He identified 04 amongst them to be Raju, Gautam, Sagar and Pahari (Applicant). Later the dead body was identified as Pramod Kumar Sharma by his son Shivam Sharma from his photographs on 21.04.2019. Applicant as well as Gautam and Sagar were arrested on the disclosure statement of the eye witness on 23.04.2019 while co-accused Naushad was arrested on 31.05.2019 and Raju was declared proclaimed offender by the learned CMM on 26.08.2019 and subsequently arrested on 04.03.2020.

4. Learned counsel for the Applicant submits that the Applicant is innocent and has been falsely implicated. Applicant is in judicial custody since 24.04.2019. Investigation was completed long ago and Charge Sheet was filed. The case before the Trial Court is at the stage of examination of prosecution witnesses. All material witnesses including the alleged eye-witness PW-1 and the son of the deceased/PW-6 have been examined. PW-1 is a planted witness which is evident from the material contradictions in his testimony and moreover, he has not supported the case of the prosecution. As per the case of the prosecution, Applicant was arrested on 23.04.2019 but PW-1 stated in his testimony on 09.06.2023 that he was called in the police station in connection with the case on two occasions i.e.



19.04.2019 and 31.05.2019 for identification of the accused persons. PW-1 also admitted in his cross-examination that he did not know the addresses of the accused persons and did not call 100 number after having seen the alleged incident with his own eyes. He also stated that on being inquired by the police he had stated that the incident took place on 19.04.2019 at 12:30 AM, which is contrary to the case of the prosecution. Insofar as PW-6 is concerned, he has only testified with respect to the identification of the body of his father with his photographs and proved the missing report filed by him, when his father did not return on 19.04.2019, having gone out in search of a job.

5. Learned counsel further submits that since material witnesses have been examined, there is no possibility of the Applicant influencing material witnesses or tampering with evidence, in the event of being enlarged on bail. As many as 14 witnesses remain to be examined by the prosecution and the trial is not likely to conclude soon. In any case, the 14 remaining witnesses are only formal and therefore, the case of the prosecution will only weaken from here. Applicant has clean antecedents. He belongs to a poor strata of the society and his family is finding it difficult to make the two ends meet. This Court may impose any condition for release of the Applicant, which he undertakes to abide by.

6. *Per contra*, learned APP for the State argues on the line of the status report and submits that the offences alleged against the Applicant are grave and serious. Eye witness PW-1 has identified him during the court proceedings and merely because he turned hostile during cross-examination cannot be a ground to release the Applicant, as testimony of a hostile witness cannot be wholly discarded. The alleged contradictions in the



testimony of PW-1 are minor and cannot be a reason to grant bail to the Applicant.

7. Heard learned counsels for the parties and examined their rival contentions.

8. It is a settled law that evidentiary value of testimonies of the witnesses or their credibility is a matter of trial. It is equally well-settled that while granting bail the discretion has to be exercised in a judicious manner and not as a matter of course. In *Kalyan Chandra Sarkar v. Rajesh Ranjan alias pappu yadav and Another*, (2004) 7 SCC 528, the Supreme Court observed that though at the stage of granting bail detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to undertake an exercise of looking into the circumstances and factors such as nature of accusation, severity of punishment in case of conviction, nature of supporting evidence, reasonable apprehension of tampering with evidence or apprehension of threat to the complainant and *prima facie* satisfaction of the Court, in support of the charge. In this backdrop and only for the limited purpose of deciding this application, Court has looked into the testimony of PW-1, the alleged eye witness, Anil Singh Jadaun and finds that the witness has not supported the case of the prosecution besides the fact that there are material contradictions in his testimony. At different places, PW-1 has given a different time of the incident. He stated that he had identified the accused persons on 19.04.2019 and 31.05.2019 in the police station whereas as per the arrest memo, (Ex.PW-1/B), Applicant was arrested on 23.04.2019. PW-1 stated that he had signed 2-4 papers in the police station on 19.04.2019, but he did not read the contents of the documents and did not know what was written in



them and that he cannot read English language. PW-1 also testified that he did not call at 100 number after he saw the alleged incident. In cross-examination by counsel for the Applicant, PW-1 first deposed that it was correct that on 19.04.2019 Applicant was not present at the spot but later corrected the statement. He also stated that the distance between his *jhuggi* and the spot where the dead body was lying was approximately 150 to 200 meters and the *jhuggi* was set up beneath the railway line and from there the place of occurrence was not visible. PW-1 was unable to identify the neighbours residing around his *jhuggi* at the time of the incident. He further deposed that Police officials have come to his *jhuggi* at about 11-12 noon on 20.04.2019 while the case of the prosecution is that PW-1 met them and told them that he was a junk picker who stays at the godown at night and narrated the incident. PW-6, the other material witness who is the son of the deceased has only testified with respect to the missing complaint lodged by the family when the deceased did not reach home on the day of the alleged incident. He was the witness who identified the dead body. *Prima facie*, there are discrepancies in the statement of the eye witness, which cannot be glossed over. In *Sumer Singh v. State, 2007 SCC OnLine Del 1189*, this Court observed that no doubt at the stage of bail, Court is not required to threadbare examine the testimony of the witnesses but that would not mean that the Court is prohibited from taking a bird's eye view of the testimony of the witnesses. Consistency or inconsistency in evidence must await trial but where prosecution case appears to be weakening, justifying grant of bail, limited exercise of *prima facie* evaluating the evidence can be carried out by the Court. In the said case, two out of three eye witnesses of the prosecution had turned hostile. Considering the age of the Petitioner therein and the fact



that all eye witnesses have been examined, Court released the Petitioner on bail.

9. In ***Prabhakar Tewari v. State of Uttar Pradesh and Another, (2020) 11 SCC 648***, the Supreme Court has held that gravity of the offence cannot be the sole basis for denial of bail. As per the nominal roll, Applicant has been in judicial custody since 23.04.2019. All material witnesses including the alleged eye witness have been examined. 14 witnesses still remain to be examined and trial is not likely to conclude soon. Moreover, the remaining witnesses are only formal witnesses and therefore, there is no possibility of the Applicant threatening or intimidating witnesses, if enlarged on bail. Even otherwise, this apprehension can be allayed by imposing strict conditions on the Applicant. In ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and Others, (1994) 6 SCC 731***, the Supreme Court held that undertrials cannot be detained in jail indefinitely pending trial. In ***State of Rajasthan, Jaipur v. Balchand alias Baliy, (1977) 4 SCC 308***, the Supreme Court held as under :-

*“2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.”*

10. In ***Praveen Rathore v. State of Rajasthan and Another, 2023 SCC OnLine SC 1268***, the Supreme Court granted bail to the accused charged under Sections 302/120B IPC considering the long custody of four and half years and the possibility that the trial was not likely to conclude soon and relevant passage is as follows:-

*“5. It is not in dispute that the petitioner, by now, has undergone more*



*than four and a half years' of sentence. The prosecution intends to examine 76 witnesses, out of whom 53 have already deposed. All the crucial witnesses have already been examined. The instant case was adjourned on few occasions to enable the prosecution to examine Chauthmal Kashyap and Manohar Rathore, who were stated to be the vital witnesses. Their deposition is also complete.”*

11. Nominal roll indicates that Applicant has clean antecedents and he is not involved in any other offence. Looking at the overall facts and circumstances and without adverting and going into the merits of the case, this Court is of the opinion that Applicant has made out a case for grant of bail. Accordingly, application is allowed and the Applicant is directed to be released on bail upon furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court, of which one surety will be by a person who is permanent resident of Delhi. Release on bail will be further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. He shall provide his mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;
- iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;
- iv. He shall appear before the Trial Court as and when the matter is taken up for hearing;
- v. He shall not indulge in any criminal activity or communicate with or come in contact directly or indirectly with any



prosecution witness. In case the Applicant is found involved in any other case or violates any bail condition, it would be open to the prosecution to file an appropriate application seeking cancellation of the bail; and

vi. Applicant shall report to the IO on every third Monday at 11:00 AM.

12. Needless to state that any observation in the present order will not tantamount to expression of opinion on the merits of the case.

13. Bail Application stands disposed of.

14. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

**JYOTI SINGH, J**

**MARCH 22, 2024**

*B.S. Rohella/shivam*