



2024:DHC:2754



\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 11.01.2024**Delivered on: 02.04.2024*+ **BAIL APPLN. 3689/2022****HARSH CHHABRA**

..... Petitioner

Through: Mr. Hirein Sharma, Mr. Vimal Tyagi, Mr. Mohit Yadav and Mr. Balaji Pathak, Advs.

Versus

STATE OF NCT DELHI

..... Respondent

Through: Mr. Aashneet Singh, APP for State with Insp. Rajeev Kakkar AHTU / Crime Branch.
Mr. Mohit Joshi, Adv. for complainant**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in connection with FIR No 216/2019, initially registered under Sections 365 IPC, at PS Greater Kailash-1. Subsequently, chargesheet was filed under Section 364/302/201/120B/34 IPC.

2. The case of the prosecution as borne out from the status report is that on 16.11.2019, Ms. Shashi Kiran Sharma came to the Police Station and reported that her brother Sh. Arun Kumar Sharma had left his



residence to attend a Court hearing in Gurugram at around 08.35 AM on 15.11.2019. He was scheduled to meet his lawyer at M.G. Road Metro Station, but he has been missing ever since.

3. On the basis of the complaint the FIR No. 216/2019 under Sections 365 IPC PS Greater Kailash-1 was registered.

4. During investigation it was revealed that Sh. Arun Sharma and Rishi Raj Pal Singh Chauhan have known each other for a long time. Before moving to Kailash Colony, Sh. Arun Sharma used to live in Gurugram and dabbled in the booming property business with Rishi Raj Pal Singh Chauhan in Gurugram.

5. The complainant stated that in 2009 differences arose between them and both of them claimed ownership on the property and this dispute *qua* the title reached the Supreme Court of India and in September 2019 the Hon'ble Supreme Court passed an order in favour of the deceased. On 15.11.2019 the execution proceeding regarding the said property was listed before Gurugram Court.

6. During further investigation, CCTV footage of some houses in the vicinity of the victim's house was collected. The images of two suspects and a white Mahindra Scorpio car had been captured on CCTV footage. The registration number of the Mahindra Scorpio car was found to be fake as the number pertained to another car.

7. Further co-accused Rishi Raj Pal Singh Chauhan and Hitesh Chauhan were called for interrogation and during that they admitted to their involvement in the gruesome crime. Investigation revealed that they had engaged 03 persons namely, Amet Vikram Chhabra, Priyank Khanna



@ Prince and Sahil Kumar Bunt to kidnap and eliminate Sh. Arun Sharma.

8. During investigation it also transpired that accused Rishi Raj Pal Singh Chauhan told the petitioner herein about the dispute between him and the deceased. The petitioner then told the accused Rishi Raj Pal Singh that his problem could be solved. Following this, a conspiracy was hatched to abduct and kill the deceased.

9. The learned counsel for the petitioner submits that the petitioner was arrested only after 10 months of registration of present FIR and the petitioner was not even arraigned as an accused in the first chargesheet nor any role was attributed to the present petitioner. As per the initial prosecution version, the role in the conspiracy and in the execution of crime was attributed to Rishi Rajpal Singh Chauhan, Hitesh Pratap Chauhan, Amit Vikram Chhabra, Priyank Khanna and Sahil Kumar.

10. He submits that as per prosecution version the petitioner is neither the abductor nor the act of murder has been attributed to him. The allegation against the petitioner that he is the conspirator are premised on the disclosure statements of the co-accused and the CDRs

11. He places reliance on the decision of the Hon'ble Supreme Court in *Kashmira Singh V. State of Madhya Pradesh, (1952) 1 SCC 275*, to contend that disclosure statements of co-accused are *per se* inadmissible and cannot be sufficient to keep the petitioner incarcerated pending his trial.

12. He submits that other incriminating evidence against the petitioner is that there are CDRs showing the petitioner was in touch with co-accused Amet Vikram Chhabra (his son) and co-accused Priyank Khanna



(his nephew) on the alleged date of the incident. Further, prosecution case is also based on the CDRs showing that the petitioner was also in touch with the co-accused Hitesh Chauhan.

13. He submits that the entire case of prosecution against the petitioner is circumstantial. According to the learned counsel, mere phone calls cannot by any stretch of the imagination lead to inference of complicity in the commission of the alleged offence, all the more when such phone calls are between the petitioner and his son, as well as, with his nephew. He further submits that the CDRs are not a substantive piece of evidence and the same cannot be the sole basis of conviction.

14. Insofar as the call records of the petitioner and Hitesh Chauhan are concerned, the learned counsel submits that the said calls are between 27.10.2019 till 31.10.2019, whereas the date of incident is 15.11.2019.

15. He further submits that it is not the case of the prosecution that the petitioner visited the alleged place of incident or participated in the crime of disposing of the body.

16. He submits that the prosecution has cited total 54 prosecution witnesses in the charge sheet and out of those only 07 witnesses have been examined till date.

17. Lastly, he submits that the antecedents of the petitioner are clean, inasmuch as no other case except the present case is pending against him.

18. In the backdrop of aforesaid facts and circumstances, it has been urged by the learned counsel that the petitioner be enlarged on bail.

19. *Per contra*, the learned APP appearing on behalf of the State, supported by the learned counsel for the complainant, has argued on the lines of the Status Report.



20. The learned APP submits that the petitioner is the prime conspirator and has actively conspired in committing the gruesome murder of the deceased and he is one of the beneficiaries of the money demanded for the murder of the deceased.

21. He submits that on the date of murder i.e. 15.11.2019, the Petitioner and co-accused were in close proximity and he had exchanged 20 mobile phone calls and 15 SMS with other co-accused namely, Amet Vikram Chhabra (Petitioner's Son) and Priyank Khanna @Prince (Petitioner's nephew) from his mobile phone, which is not normal in comparison to communication during other days.

22. He further submits that the petitioner was non-cooperative in the investigation and was evading the investigating agency. The Petitioner was arrested after the proceedings against him were initiated under Section 82 CrPC.

23. The learned counsel for the complainant submits that there was exchange of calls between the petitioner and Rishi Raj Pal Singh Chauhan since the passing of order in favour of the deceased by the Hon'ble Supreme Court in respect of the disputed property which clearly depicts that a conspiracy was hatched to eliminate the deceased. Further, there are also calls between the petitioner and co-accused Hitesh Chauhan.

24. He submits that there were 36 calls exchanged between the petitioner and co-accused Amet Vikram Chhabra, as well as, Priyank and analysis of the CDR's of the accused persons clearly establishes the factum that they were telephonically connected with each other on the



date of the offence. The CDRs further establishes the active involvement of the petitioner with the other co-accused.

25. I have heard the learned Counsel for the petitioner, as well as, the learned APP for the State and the learned Counsel for the complainant and have given my thoughtful consideration of the material on record.

26. The present is a case based on circumstantial evidence. It is trite that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

27. The motive attributed to the petitioner is that the petitioner with the main accused Rishi Raj Pal Singh had hatched a plan to kill the deceased, who had succeeded in a litigation related to a property, against the said main accused, up to the Supreme Court of India and was prosecuting the execution proceedings in the Court at Gurugram. Thus, there is no direct motive attributed to the petitioner.

28. The case of the prosecution against the petitioner is that he was hired by the main accused to eliminate the deceased. However, the case of the prosecution was initially against five accused persons namely, Rishi Rajpal Singh Chauhan, Hitesh Pratap Chauhan, Amet Vikram Chhabra, Priyank Khanna and Sahil Kumar.

29. It is not the case of the prosecution that the petitioner was directly involved in the execution of murder or in the crime of disposal of dead



body of the deceased.

30. The name of the petitioner has cropped up only on the basis of disclosure statements of co-accused which are not substantive piece of evidence. Even the recovery of vehicle used in commission of crime, as well as, cash of Rs. 99,000/- out of Rs. One Lakh allegedly paid by co-accused Rishi Raj Pal Singh Chauhan and Hitesh Chauhan as advance, were recovered from one Rakesh Mehra, at the instance of co-accused Amet Vikram Chhabra.

31. The only incriminating material against the petitioner is the CDRs of calls between the petitioner and co-accused Amet Vikram Chhabra, as well as, co-accused nephew-Priyank Khanna @ Prince; and CDRs of calls between the petitioner and co-accused Rishi Raj Pal Singh Chauhan, as well as, co-accused Hitesh Chauhan.

32. The contention of the learned counsel for the petitioner to the effect that the CDRs showing that the petitioner was in touch with aforesaid co-accused cannot be said to be an unusual circumstance as the said co-accused are undisputedly, son and nephew of the petitioner, is not entirely without substance. However, the unusualness in the number of calls on the day of incident is an aspect, the evidentiary value of which will be considered by the learned Trial Court during the trial.

33. The CDRs shows calls between the petitioner, as well as, co-accused Rishi Rajpal Singh Chauhan in the month of August, 2019 and the calls between petitioner and co-accused Hitesh Chauhan are in the month of October, 2019, whereas the incident is of 15.11.2019. In any case, the CDR data is not a substantive piece of evidence and can only be used as support or for corroboration and cannot form the sole basis of



conviction.¹ Reference may also advantageously be had to the decision of the Supreme Court in **State (By NCB) Bengaluru v. Pallulabid Ahmad Arimutta, (2022) 12 SCC 633**, the relevant paragraph of which reads as under:-

“12. ...The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage trial.”

34. No other incriminating circumstance has been pressed against the petitioner. Further, as per the first chargesheet mobile phone of all five accused persons arraigned therein were recovered but *prima facie* it appears that nothing incriminating in the form of SMS or WhatsApp chats were found against the petitioner.

35. The prosecution has cited as many as 54 witnesses and only 04 witnesses have been examined till date thus, there is no possibility of the trial being concluded any time soon. The circumstances discussed above, do not warrant keeping the petitioner in custody for an indefinite period to await the conclusion of trial.

36. It is well settled that at the pre-conviction stage, there is a presumption of innocence and an ultimate acquittal with continued custody would rather, be a case of grave injustice. The aforesaid circumstances coupled with incarceration of approximately three years tilts the balance in favour of the petitioner for grant of bail.

37. It is not the case of the prosecution that the petitioner has a criminal record. Insofar the apprehension that the petitioner might influence the witnesses in the event he is enlarged on bail, the same

¹2023 SCC OnLine Del 1769 :Azad v. State of GNCT of Delhi



could be dispelled by imposing appropriate conditions.

38. The petitioner is permanent resident of Gurugram, therefore, he does not seem to be a flight risk.

39. Considering the circumstances in entirety, I am of the view that the petitioner is entitled to grant of regular bail pending trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of like amount, one of which should be of the family member, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions:

- a) The petitioner shall not leave the NCR without permission of this Court and shall ordinarily reside at the address as per prison records/as mentioned in the petition;
- b) Petitioner shall surrender his Passport, if any, before the Trial Court at the time furnishing bail bond/surety bond.
- c) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- d) The petitioner shall furnish to the IO/S.H.OP.S: Greater Kailash, a cell-phone 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;
- e) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to the complainant or any of the prosecution witnesses or other persons acquainted with the facts of the case.
- f) The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would



2024:DHC:2754



prejudice the proceedings in the pending trial.

40. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

41. The petition stands disposed of.

42. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.

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

44. Order be uploaded on the website of the Court.

VIKAS MAHAJAN, J.

APRIL 02, 2024

N.S. ASWAL