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

+ **BAIL APPLN. 4001/2023**

ROHIT

..... Petitioner

Through: Mr. Vineet Jain, Adv.

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State with Insp. Kuldeep Singh, PS.
Sarai Rohilla.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

28.02.2024

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1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.238/2018 under Sections 302/120B/34 IPC registered at Police Station Sarai Rohilla.
2. The case of the prosecution is that on 20.06.2018 *vide* DD No.O8PP, an information of murder of a lady by strangulation was received at Police Station Sarai Rohilla, on which SI Pankaj Tomar (I.O) reached at the spot and found that one lady namely Bhagwan Dei w/o Late Omprakash R/o Jhuggi No.66A, near Banjara Masjid, Rakhi Market, Zakhira Flyover, Delhi was found dead having ligature marks on her neck. During the investigation, Urmila, Ashok and the present petitioner were arrested on 20.06.2018.
3. The learned counsel for the petitioner submits that it is not a case based on eye witness account, but it is a case of circumstantial evidence. He submits that the prosecution has relied upon two circumstances viz., (i) the



last seen theory, and (ii) an extra judicial confession.

4. He submits that the last seen theory has been propounded by the prosecution through witness Mohd. Mumtaz, whereas PW Mohd. Tawarak was a witness to whom the extra judicial confession is stated to have been made by co-accused Ashok.

5. He invites the attention of the Court to the order of the learned Trial Court dated 16.03.2022, to contend that both the witnesses through whom the aforesaid circumstances were sought to be proved have expired before recording of their evidence. This fact is not disputed by the learned APP, on instructions from the I.O, who is present in Court.

6. Apart from the aforesaid circumstances, the only incriminating material which has been relied upon by the prosecution is the CDRs showing that the present petitioner was in touch with co-accused Urmila.

7. The learned counsel submits that there is nothing unusual about the petitioner being in touch with co-accused Urmila over telephone as Urmila happens to be the real sister of the petitioner. The relationship between petitioner and the Urmila is also not in dispute. Besides that, CDR is not substantive evidence and can be used only for corroboration.

8. In the facts and circumstances of the case, this Court is of the view that the petitioner entitled to the regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 20,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

a) Petitioner shall not leave the Delhi without prior permission of the Court.



- b) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - c) Petitioner shall provide mobile number to the IO concerned which 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.
 - d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
- 9. The petition stands disposed of.
 - 10. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.
 - 11. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
 - 12. Order *dasti* under signatures of the Court Master.
 - 13. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 28, 2024/dss