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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision: 18th September, 2024*

+ BAIL APPLN. 2887/2024

DEEPAK @ TUTAN@ BHARAT SHARMAApplicant
Through: Ms. Astha, Advocate
(DHCLSC) with Ms.
Megha, Advocate.

versus

STATE OF NCT OF DELHIRespondent
Through: Mr. Ajay Vikram Singh,
APP for the State.
Inspector Dharamveer
Singh & Inspector
Surender Singh

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present application is filed seeking regular bail in FIR No. 104/2016 dated 27.03.2016, registered at Police Station Sector 23 Dwarka for offences under Sections 302/307/201/34 of the Indian Penal Code, 1860 ('IPC').
2. The FIR was registered on a complaint given by Kanhaiya. It is alleged that the complainant along with the deceased Mukesh had gone to meet accused Vinay, Omvir, Sunil and the applicant at Sector 10 Dwarka. It is alleged that thereafter all the four accused persons attacked the complainant and the deceased



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with knife and heavy iron rod. It is further alleged that once the complainant and the deceased became unconscious, the accused persons put them inside the Polo car of the complainant and took them towards Dhoolsiras intending to dispose the bodies by burning the car.

3. It is alleged that the Polo car of the complainant was driven by accused Sonu, whereas the other three accused persons, including the applicant, followed them in a Santro car. It is alleged that thereafter when the accused persons were going towards Dhoolsiras, they abandoned the Polo Car and fled the scene upon spotting the presence of a police personnel. It is alleged further that once the accused persons fled the scene, the complainant, who was in an injured state, himself drove the Polo car to the police barricades. On the statement of the complainant, the subject FIR was registered.

4. During the course of the investigation, the applicant was arrested on 27.03.2016.

5. Chargesheet in the present case was filed under Sections 302/307/201/34 of the IPC.

6. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. She submits that the first DD entry of the alleged incident being DD No. 22A records the said incident as a case of accident, and that there is no mention of any form of assault. She submits that even the statements of the complainant are not consistent and are full of contradictions. She submits that the said Polo car, which belonged to the complainant, was not purchased by him until



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after the date of the incident. The complainant in his affidavit had mentioned the date of purchase of the car as 28.03.2016, that is, a day after the registration of FIR.

7. She submits that the deceased had died due to stab wounds, however, no weapon was recovered at the instance of the applicant. She submits that the applicant is languishing in custody since 27.03.2016, and the trial is not likely to conclude in the near future. She submits that only formal witnesses remain to be examined, and there is no possibility of threatening/intimidating the sole eyewitness who already has been cross-examined.

8. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the request for grant of bail to the present applicant. He submits that at the instance of the applicant, the place of incident was pointed out, and blood stained clothes of the applicant were also recovered. He submits that the FSL expert opined that the blood found on the clothes of the applicant matched with the blood sample of the deceased and the complainant. He submits that the complainant has already been examined, and he has correctly identified all the accused persons in the Court and has also corroborated his earlier statement.

9. He submits that the complainant had specifically deposed that the applicant was holding a pana, and that the complainant himself was attacked by the accused persons using pana and knives. He submits that the contentions of the applicant regarding discrepancies in the date of purchase of car need not be considered since the car itself was purchased prior to the date of



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the incident, however, the documents for the same were executed later. He submits that the same in any case does not have any bearing in the present case.

10. He submits that the applicant is involved in a grave and heinous offence, and has killed a person in conspiracy with the co-accused persons.

11. The allegation against the applicant is allegedly of conspiring in the act of attacking the complainant and causing the death of the deceased Mukesh.

12. The Hon'ble Supreme Court in catena of judgments has consistently emphasised the factors to be taken into account when considering bail application, which include: (i) the nature or gravity of the offense; (ii) the character of the evidence and circumstances unique to the accused; (iii) the likelihood of the accused evading justice; (iv) the potential impact of the release on prosecution witnesses and its societal repercussions; and (v) the probability of the accused engaging in tampering.

13. In the present case, the charges framed against the applicant are under Sections 302/307/201/34 of the IPC. The complainant in his testimony before the learned Trial Court has maintained that on the day of the incident, the complainant along with the deceased had gone to meet Omvir where the other three accused persons were already present. The complainant has categorically deposed that a quarrel broke out between the deceased and the accused persons, after which the four accused persons attacked the deceased with rods, knives and bricks. The complainant has further stated that when he thought of



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intervening, and got off his car, he too was hit with an iron rod at the back of his head. He has also stated that all the four accused hit both, the complainant and the deceased. The complainant has also unequivocally maintained that upon presuming them dead, the four accused persons intended to dispose the complainant and the deceased by burning the car. It has further consistently been maintained that when the four accused persons fled the scene upon spotting a police barricade, the complainant himself, in an injured state, drove the car over to the police barricade.

14. The post-mortem report of the deceased highlights the manner of death to be homicidal. From a perusal of the report, it transpires that the deceased suffered as many as 19 injuries. The cause of death has been delineated as stab wounds. The deceased suffered 6 injuries by stabbing weapon, 10 injuries by a sharp weapon, and 3 injuries by blunt force impact. At this stage, the role attributed to the applicant is no different than the other accused persons.

15. It is evident that the grant of bail should not be arbitrary or whimsical. The Hon'ble Supreme Court in ***Neeru Yadav v. State of U.P. : (2014) 16 SCC 508***, where the Court, while setting aside the bail order, made the following observation:

“16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that liberty is a priceless treasure for a human being. It is founded on the bedrock of the constitutional right and accentuated further on the human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People



from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilised society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilised. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to the rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

16. Being conscious of the fact that individual liberty holds immense significance, it is incumbent upon the Courts to examine and evaluate, *albeit* briefly, factors such as the *prima facie* case, the severity of the crime, and the accused’s likelihood to tamper with evidence, among other considerations.

17. It is pertinent to note that the law confers a special status to the testimony of an injured eyewitness. The Hon’ble Apex Court in ***Abdul Sayeed v. State of M.P. : (2010) 10 SCC 259*** observed as under:

“30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the



injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

18. While this Court is cognizant of the fact that at the stage of of bail, this Court ought not to examine the testimony of the witness threadbare as the same is a matter of trial, yet it does not prohibit this Court from forming an overall perspective on the testimony of the witness. Considering the status report filed by the State, and the testimony of the complainant, it cannot, at this stage, be held that the charges against the applicant are frivolous or that the applicant is sought to be falsely implicated. The nature and gravity of the allegations are serious. The material presented by the prosecution establishes a *prima facie* involvement of the applicant.

19. It is pointed out that the applicant has been in custody for more than 6 years. It is trite that long period of incarceration is a factor to be considered while deciding the question of bail. The Hon’ble Apex Court in the case of ***Union of India v. K.A. Najeeb : AIR 2021 SC 712***, has held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

20. However, in the opinion of this Court, long period of incarceration alone cannot be a single factor for grant of bail especially when the evidence collected at this stage *prima facie*



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points towards the guilt of the accused. The applicant is charged for an offence under Section 302 of the IPC wherein the minimum punishment is imprisonment for life. For this reason, even though there has been a long period of incarceration, yet the same cannot be the only reason to grant bail to the applicant at this stage.

21. It is also noted that Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') provides the maximum period for which an undertrial prisoner can be detained in custody. The same is reproduced hereunder:

"479. Maximum period for which undertrial prisoner can be detained.—(1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail: Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

(2) Notwithstanding anything in sub-section (1), and subject



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to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.

(3) The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail.”

22. In accordance with Section 479 of the BNSS, if an accused, during the period of investigation/ inquiry/ trial, undergoes one-half of the maximum period of imprisonment specified for the offence, he is entitled to bail. However, Section 479 of the BNSS is not without qualifications. In accordance with Section 479 of the BNSS, for any offence for which the punishment of death or life imprisonment is specified as one of the punishments, Section 479 of the BNSS would not apply. It is however pertinent to mention that the *proviso* to Section 479 of the BNSS provides that when the accused is a first-time offender, the accused shall be released on bond if the accused undergoes detention for a period extending up to one-third of the maximum period of imprisonment specified for such offence.

23. It is pertinent to mention that while the applicant is a first-time offender, yet, since he has been charged under Section 302 of the IPC for which the punishment is death or imprisonment for life, the benefit under Section 479 of the BNSS would also not be applicable in the present case.

24. It is pertinent to mention that while deciding the question of bail, the court must carefully balance the individual's right to



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liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence and its impact on society.

25. Accordingly, taking into account the material available on record, and the submissions made by the learned counsel for the parties, this Court is of the opinion that *prima facie*, there are serious allegations against the applicant which at this stage cannot be said to be without any material.

26. Considering the aforesaid, this Court is not inclined to grant bail to the applicant at this stage. It is seen that the complainant has already been examined. It is stated that out of 34 witnesses, only 14 witnesses have been examined. The remaining witnesses are formal witnesses. In view of the above, the learned Trial Court is directed to expedite the trial and conclude the examination of witnesses within the next six months.

27. It is made clear that the observations made in the present case are only for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

28. In view of the above, the present bail application is dismissed.

AMIT MAHAJAN, J

SEPTEMBER 18, 2024/ 'Aman'