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

+ **BAIL APPLN. 2935/2024**

SHUBHAM @ RINKUPetitioner
Through: Mr. Vikash Rathi,
Advocate.

versus

THE GOVT OF NCT OF DELHIRespondent
Through: Mr. Ajay Vikram Singh,
APP for the State along
with along with Inspector
Sanjay Kumar Meena P.S.
NIA, OND, Delhi.

+ **BAIL APPLN. 3294/2024**

ROHITPetitioner
Through: Mr. Pradeep Rana, Mr.
Gagan Bhatnagar, Mr.
Ankit Rana and Mr.
Tushar Rohmetra,
Advocates.

versus

THE STATE OF NCT OF DELHIRespondent
Through: Mr. Ajay Vikram Singh,
APP for the State along
with along with Inspector
Sanjay Kumar Meena P.S.
NIA, OND, Delhi.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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15.10.2024

CRL.M.A. 24622/2024 (exemption) & CRL.M.A. 27501/2024 (exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The applications stands disposed of.



BAIL APPLN. 2935/2024 & BAIL APPLN. 3294/2024

3. The present applications are filed seeking regular bail in FIR No. 940/2022 dated 18.12.2022, registered at Police Station Narela Industrial Area for offences under sections 302/341/34 of the Indian Penal Code, 1860 ('IPC').

4. Briefly stated, the case of the prosecution is that on 18.12.2022, a PCR call was received at the Police Station stating that an intoxicated naked person was lying outside the caller's shop; subsequent to which another call was received from SRHC Hospital Narela regarding an unknown male who was brought dead to the hospital. Upon inspection, it was discovered that the deceased had no clothes on his body and endured signs of beatings on the entire body.

5. During the investigation, the deceased was identified as one Amjad Ali by his mother Sehnaj and his friend, namely, Ali Hasan @ Irshad also. In his statement, Ali Hasan alleged that on the night of 17/18.12.2022, he and his associates went to the village of Sannoth, Delhi, to commit a burglary. Around 2 a.m., his friend Amjad (the deceased) was caught by the occupants of a car in the village and was beaten with a stick. He further stated that the attackers were calling each other with the names – Vishal, Rohit, and Rahul.

6. The above-stated sequence of events led to registration of present FIR No. 940/2022 at the instance of Ali Hassan @ Irshad (complainant).

7. During the investigation, CCTV footage from near the scene of the alleged incident showed a suspect carrying a stick, identified as one of the individuals who assaulted the deceased. The footage also captured the suspect's car, which the



complainant identified as the vehicle used by the attackers. As a result, the suspects were apprehended based on the identification by eyewitness - Ali Hasan. The applicant – Shubham was arrested at the instance of accused – Rohit.

8. The learned counsel for the applicants submits that the applicants are law-abiding citizens and have been falsely implicated in the present case. They submit that the applicants are in custody since 19.12.2022 and the investigation is complete. He further submits that the trial is not likely to be concluded in the near future.

9. They submit that the applicants – Shubham has been apprehended only on the basis of the disclosure statement of co-accused/applicant – Rohit, in as much as the complainant himself has nowhere identified the applicant – Shubham in the FIR.

10. They submit that there was no element of conspiracy or prior meeting of minds and neither was there any knowledge to cause death of the victim. They submit that no injury was inflicted on any vital organ nor any use of deadly weapon was made.

11. They submit that the trial will take its own course and is not likely to conclude in near future as the delay is caused either by prosecution on the pretext of FSL opinion awaited or on the ground of absence of Investigating Officer before the learned Trial Court.

12. They submit that the applicants were arrested solely on the basis of CDR records which is to be tested during the course of trial and mere telephonic conversation with co-accused cannot be deemed to be incriminating evidence.



13. They further submit that the CCTV footage does not connect the applicants with the commission of the alleged offence. They submit that as per the version of the prosecution the applicant – Shubham was driving an Alto car and the car is visible, however, the face of the driver is not seen in any of the camera recordings.

14. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the present bail applications. He submits that the offences levelled against the applicant in both the cases are heinous in nature and in such circumstances, no relief should be granted to them.

15. I have heard the learned counsel for the parties and perused the record.

16. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

17. The allegations in the present case are grave and heinous in nature. It is the prosecution's case that the co-accused persons brutally murdered the deceased and the applicants were part of the conspiracy.

18. The prosecution has placed reliance on the CDRs of the applicants to show that they were in constant touch with the co-



accused persons. The prosecution also placed reliance on CCTV footage to allege that the accused persons came in one suspected car with the intention to commit the crime.

19. It is relevant to note that the commission of the crime was not captured in any of the CCTV footages. The incident was allegedly witnessed by Ali Hasan, who is stated to be accompanying the victim to the village Sannoth to commit burglary. The witness stated that he had seen the accused persons beating the victim. He, however, ran away and went to his house and did not inform the Police. The applicants have doubted the presence of the eye-witness at the place of incident.

20. The applicants were allegedly seen in the CCTV footage while moving around in the village. It is a contention of the applicants that they, being the residents of the village, would obviously be seen moving around and their location would also naturally be of the same area.

21. Even as per the case of the prosecution, the victim and the eye-witness were caught by the residents on their efforts to commit burglary. In such circumstances, the possibility of large number of people being involved in giving beatings to the victim cannot be ruled out. Whether it is the beatings given by the applicants which led to the death of the victim or the possibility of them being actively involved in commission of the alleged offence would be tested during the course of trial.

22. It is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to bail. [Ref: ***Ram Govind Upadhyay v. Sudarshan Singh: (2002) 3 SCC 598***].



23. In the present case, while the charges have been framed against the applicants, none of the witnesses have been examined yet. It is pointed out that the matter has been adjourned on the request of the prosecution. The applicants are in custody since 19.12.2022 and the delay in trial cannot be attributed to the applicants. There is no likelihood of the trial being completed in near future. In such circumstances, incarceration of the applicants for an endless period on account of non-examination of witnesses falls foul of Article 21 of the Constitution of India.

24. The applicants are also stated to have clean antecedents and have families to take care of.

25. While it cannot be denied that the offences alleged against the applicant are heinous in nature, the Hon'ble Apex Court in the case of ***Javed Gulam Nabi Shaikh v. State of Maharashtra and Another*** : CrI.A.2787/2024 has observed as under:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

26. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

27. The apprehension in regard to the witness being influenced or the evidence being tampered with cannot be sole ground for



denying the bail to the applicants. In the opinion of this Court, appropriate conditions can be put to allay the threat in relation to the apprehension of there being any threat to the complainant or the witnesses.

28. In view of the above, the applicants are directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the cases, in any manner whatsoever;
- b) The applicants shall under no circumstance leave the boundaries of the country without the permission of the Trial Court;
- c) The applicants shall appear before the learned Trial Court as and when directed;
- d) The applicants shall provide the address where they would be residing after their release and shall not change the address without informing the concerned IO/ SHO;
- e) The applicants shall, upon their release, give their mobile number to the concerned IO/SHO and shall keep their mobile phone switched on at all times.

29. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bails.



30. It is clarified that any observations made in the present order are for the purpose of deciding the present bail applications 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.

31. The bail applications are allowed in the aforementioned terms.

32. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

OCTOBER 15, 2024