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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2992/2024**

HASIM @ SONU

.....Applicant

Through: Mr. Bankey Bihari & Mr.
Kartikeya Gautam, Advs.

versus

THE STATE GOVT.NCT OF DELHI

.....Respondent

Through: Mr. Naresh Kumar
Chahar, APP for the State.
SI Vidyakar Pathak, PS
NDRS.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **23.10.2024**

CRL.M.A. 25066/2024 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed seeking regular bail in FIR No.88/2019, dated 03.11.2019, registered at police station New Delhi Railway Station, for offences under Sections 363/365/342/384/323/34 of the Indian Penal Code, 1860 (IPC).
4. The chargesheet has already been filed against the applicant and other accused persons under Sections 323/342/363/365/384/394/397/34 of the IPC.
5. The FIR was filed following a complaint wherein it was alleged that when the complainant and his son arrived at New Delhi Railway Station via Shatabadi Train and then booked a cab to the airport, the driver of the cab stopped the vehicle under

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some pretext, and shortly thereafter, three unidentified individuals entered the cab and kidnapped the complainant and his son. It is alleged that the applicant was the cab driver involved in this incident.

6. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the allegations were made against the five accused persons and two of them have already been admitted on bail by this Court by orders dated 01.11.2023 and 22.05.2024 in Bail Application No.2597/2023 and Bail Application No.2309/2022 respectively.

7. The Coordinate Bench of this Court by order dated 01.11.2023 admitted the co-accused Sachin Paswan on bail noting that the prosecution has cited 33 witnesses, out of which only one witness has been examined and the trial is not likely to conclude any time soon.

8. On being pointedly asked, the learned Additional Public Prosecutor for the State submits that only two witnesses have been examined as yet. Admittedly, the trial is not likely to conclude any time soon.

9. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeer*** : 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.

10. While it cannot be denied that the offence alleged against the applicant is serious in nature, the Hon'ble Apex Court in the case of ***Javed Gulam Nabi Shaikh v. State of Maharashtra and***



Another : Crl.A.2787/2024 had reiterated that bail cannot be withheld as a punishment and 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.”

11. 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. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

12. While the antecedents of the applicant cannot be ignored, bail cannot be denied to the applicant merely on account of pendency of other cases against him, especially when he has already been enlarged on bail in other cases. [Ref: ***Prabhakar Tiwari v. State of Uttar Pradesh : (2020) 11 SCC 648***].

13. The applicant was arrested on 30.11.2019 and is in custody since then. The role attributed against the applicant cannot be stated to be graver than the co-accused – Sachin Paswan. All the accused persons have been charged for the same offence which they allegedly committed together.

14. In view of the above, this Court is of the opinion that the applicant is entitled to bail on the ground of parity and long



period of incarceration. The applicant is, therefore, directed to be released on bail on furnishing a personal bond in the sum of ₹15,000/- with two sureties of the like amount, out of which one surety shall be a family member of the applicant, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant 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 case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

15. The applicant is stated to be resident of Loni Ghaziabad. The learned Trial Court is directed not to insist on local surety.

16. 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 bail.

17. It is clarified that any observations made in the present order are 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.

14. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 23, 2024
“SK”