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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 18/2024**
ROHIT NAGAR @KALU

..... Applicant

Through: Mr.M.P. Sinha, Mr.Yatharth
Sinha, Mr.Hitesh, Mr.Vishal,
Mr.Neeraj Kanwar,
Ms.Tanushka, Mr.Rajesh
Chaudhary and Ms.Jyoti Jha,
Advs.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr.Aman Usman, APP
alongwith Insp. Sukhram Pal
and SI Dev Kumar.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
22.02.2024

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1. This application has been filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for being released on bail in FIR No. 695/2022 registered at Police Station: New Usmanpur, North-East District, Delhi under Sections 302/201/34 of the Indian Penal Code, 1860 (in short, 'IPC') and in proceedings emanating therefrom pending adjudication before the Court of the learned Additional Session Judge-02, North-East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Trial Court').



2. It is the case of the prosecution that, on 11.07.2022, an information was received at 3:48 PM, recorded as GD no.99A, that a dead body is lying at the gate of Moni Baba Mandir, Gali No.10, Brahmampuri. The dead body was, thereafter, identified as one of a vagabond named Aashu. Later, CCTV footage and photos were forwarded by Insp. Prabhanshu by way of WhatsApp. On their analysis, two unknown persons along with the deceased were found travelling on a motorcycle, registration number of which is stated to be not clear. On further inquiry, based on the statement of PW-1 Sh.Kapil Kumar, who identified that the two other persons along with the deceased riding the motorcycle were the Applicant herein and one Mr.Rahul Chaudhary, the Applicant was called for investigation.

3. It is the case of the prosecution that the Applicant, in his disclosure statement, admitted that the deceased had beaten co-accused Mr.Himanshu Nagar on 09.07.2022, based whereon FIR No. 691/2022 had been registered with Police Station: New Usmanpur. To identify the assailant, Mr.Himanshu Nagar had circulated the photographs obtained by him through a CCTV to his relatives and friends for purposes of identifying the assailant. Once the assailant was identified, he was picked up by the Applicant along with Mr.Rahul Chaudhary and brought to the spot of the crime, that is, Om Shiv Dairy. There, he was beaten by the accused persons.

4. The prosecution also places reliance on the blood stains that were found at the spot of the crime and for which FSL report has opined that the DNA present in the blood stains matched with that of the deceased.



5. The learned counsel for the applicant submits that the Applicant is being implicated in the case only because he was allegedly identified as the person riding the motorcycle along with the deceased and Mr.Rahul Chaudhary. He submits that the person in the photograph/CCTV is not the Applicant. He submits that the only other allegation against the Applicant can be that he is the cousin of the co-accused Mr.Himanshu Nagar, who, as per the prosecution, had been beaten up the day prior to the incident by the deceased. He submits that both of these circumstances cannot, in any manner, be sufficient to implicate the Applicant in this case. He submits that the alleged disclosure statement of the applicant is not admissible in evidence.

6. He further submits that the Applicant has been in custody since 14.07.2022. He submits that the Applicant has no other criminal antecedents. He further submits that the public witnesses already stand examined before the learned Trial Court.

7. On the other hand, the learned APP submits that, in the present case, the motive was available with the co-accused Mr.Himanshu Nagar, who is the cousin of the Applicant. He submits that the Applicant was found roaming around with a *danda*, around the time of the incident. He further submits that the blood stains of the deceased have been found at the dairy belonging to the father of the co-accused Mr.Himanshu Nagar, who has also disclosed the involvement of the Applicant in the crime. As far as the identification of the Applicant as the person riding the motorcycle along with the deceased is concerned, he fairly admits that it is not clear that it is the Applicant.

8. I have considered the submissions made by the learned counsels



for the parties.

9. It is evident that the entire case against the Applicant is based on circumstantial evidence, with the primary circumstance arising from the alleged identification from the CCTV footage of the Applicant riding on the motorcycle along with the deceased near the time when the dead body of the deceased was recovered. There is a doubt on whether it was the applicant in that CCTV footage.

10. The other reason for the implication of the Applicant is from a photograph showing him to be carrying a *danda* near his own house around the time of the incident, and that his own cousin brother, that is, co-accused Mr.Himanshu Nagar, being beatenup by the deceased prior to the date of the incident. They would be rather weak pieces of evidence.

11. The blood stains have been allegedly recovered from the premises that does not belong to the applicant, but to the father of the co-accused.

12. As noted hereinabove, the applicant has been in custody since 14.07.2022. There are no criminal antecedents of the Applicant. The public witnesses already stand examined.

13. Keeping in view the totality of the circumstances, therefore, I am of the opinion that the Applicant has been able to make out a case for being released on bail.

14. Accordingly, it is directed that the Applicant, Rohit Nagar @Kalu, be released on bail in FIR No. 695/2022 registered at Police Station: New Usmanpur, North-East District, Delhi under Sections 302/201/34 of the IPC, on furnishing a personal bond in the sum of



Rs.10,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant will not leave the country without the prior permission of the learned Trial Court.
- ii. The Applicant shall provide his permanent address to the learned Trial Court. The Applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- iii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or tamper with the evidence of the case.

15. Needless to state, any observation touching upon the merits of the case is purely for the purposes of deciding the question of grant of Bail and shall not be construed as an expression on the merits of the prosecution.

16. The Bail application is disposed of in the above terms.



17. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

FEBRUARY 22, 2024/ns/AS

Click here to check corrigendum, if any