



2024:DHC:1621



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

% Judgment delivered on: 28.02.2024

+ BAIL APPLN. 44/2024

PARVINDER SINGH @ KALLU @ RINKU Petitioner

Through: Mr. Taranpreet Singh, Mr. Mandeep Singh, Mr. Dharm Prakash and Mr. Mohd. Shameem, Advs.

Versus

THE STATE (NCT OF DELHI) Respondent

Through: Mr. Ritesh Kumar Bahri, APP for State with SI C.S. Yogi, PS. Khyala.

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J. (ORAL)**

1. The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in connection with FIR No. 428/2018 under Section 302/392/394/397/411/201 IPC registered at Police Station Khyala.
2. The case of the prosecution is that on 31.12.2018, an information *vide* DD No. 43A was received at about 09:32 pm regarding a murder near Nav Jiwan School, Vishnu Garden, Delhi at Police Station Khyala. Accordingly, the aforesaid FIR came to be registered under Section 302 IPC. The petitioner was later on arrested on 02.01.2019 and thereafter on recovery of jewellery articles at his instance, the offences under Sections 394/397/411/201 IPC were added.
3. Notice was issued in the petition on 04.01.2024 and the State was directed to file its Status Report. The Status Report has been filed and the

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same is on record.

4. The learned counsel for the petitioner has also handed over a convenience compilation containing FSL report and other relevant documents, the same is taken on record.

5. The learned counsel for the petitioner inviting the attention of the Court to the charge sheet, submits that the FIR was registered at the instance of the father of the deceased namely, Munna Lal, who at the first instance in his statement has not mentioned that anything was missing from their house nor any suspicion was expressed with regard to the involvement of present petitioner in the offence.

6. He further submits that in the charge sheet it has been clearly mentioned that the CCTV cameras of the surrounding area were also examined by the I.O. but and the CCTV footages did not disclose anything about the accused. Subsequently on 02.01.2019, the statement of the mother of the deceased was recorded under Section 161 Cr.P.C., who for the first time stated that about 15 days ago the present petitioner had seen her keeping cash and jewellery articles in the almirah.

7. The learned counsel for the petitioner submits that recovery of one bag was allegedly effected at the instance of the present petitioner from an open space on the roof of the house of the accused which according to the learned counsel is not a recovery from the concealed / hidden place, which could only be within the knowledge of the petitioner. Thus, the recovery is rendered doubtful.

8. He submits that the case of the prosecution is that jewellery, blood stained knife, robbed cash, blood stained gloves etc., were found in a bag, however, the said bag was never seized, which also create serious doubt about



the recovery. According to the learned counsel, the non-seizure of the bag is a missing link in the story of the prosecution which is premised on a circumstantial evidence.

9. He submits that the shop keeper from whom the present petitioner had allegedly purchased the gloves has also not supported the case of the prosecution, in as much as, he has stated that the present petitioner had not purchased any gloves from him.

10. He submits that no chance finger prints were collected from the site as, well as, from the incriminating articles recovered from the spot which were sent for analysis to the FSL.

11. The learned counsel for the petitioner has invited the attention of the Court to the Forensic Laboratory Examination Report, more particularly to the Exhibits 7a, 7b and Exhibit 8, as well as, the result of biological examination, to contend that the said exhibits which are clothes of the petitioner recovered at his instance, do not contain the blood stains of the deceased.

12. He further invites the attention of the Court to the testimony of Junior Forensic Chemical Examiner, who was examined as PW-12, to contend the said witness has also admitted that allelic data/ DNA profile of Exhibits 7a, 7a and 8 were never compared with other exhibits as no DNA/blood could be found/detected on it. The witness further stated that the fingerprints matching of the said articles could have been conducted by the FSL, if a specific request had been made in this regard. Elaborating on this, he submits that no specific request for the analysis of fingerprints was ever made.

13. He submits a perusal of the testimony of PW-12 also shows that nothing has been found relating to the accused through DNA analysis.



14. He further contends that no independent witnesses were associated by the Investigating Officer in the recovery, as well as, while recording the disclosure statement of the accused, in as much as, none of these documents have been attested by any independent or public witness.

15. According to the learned counsel, the petitioner is in custody since 02.01.2019, however, during the pandemic, he was enlarged on interim bail on the recommendations of the HPC guidelines but at no stage liberty so granted to him was misused by him.

16. He further submits that all public witnesses have been examined and only formal witnesses remains to be examined, therefore, there is no question of petitioner influencing the witnesses in the event he is enlarged on bail. He, therefore, urges this Court that the petitioner may be enlarged on bail.

17. *Per contra*, the learned APP has argued on the lines of the Status Report. He has pointed out that in para 9 of the Status Report, it has been specifically mentioned that there is another case being FIR No. 102/2019 under Sections 354/345-A/506 IPC registered against the present petitioner at Police Station Ranjeet Nagar.

18. He further submits that the CDR shows that the petitioner was present at his house at around 18:56 hours which is the approximate time of incident, as per prosecution version and the residence of the petitioner is in the vicinity of the place of incident.

19. He further submits that the recovery of jewellery, blood stained knife, robbed cash, blood stained gloves at the instance of petitioner is a conclusive circumstance of the petitioner having committed the offence. He, therefore, urges the Court that the present petition may be dismissed.

20. In rejoinder, the learned counsel for the petitioner submits that the case



FIR which has been referred in the Status Report is in fact, the case of the year 2019 whereas the petitioner is in custody since 02.01.2019, therefore, the said case does not pertain to the present petitioner.

21. He further submits that there is nothing unusual in the CDR indicating the location of the petitioner of his house and cannot be an incriminating circumstance.

22. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

23. There is no direct eye witness account available in the present. It is a case based on circumstantial evidence. It is trite that in a case premised on circumstantial evidence the circumstances from which conclusion of guilt is to be drawn should be fully established and facts so established should be consistent only with hypothesis of guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and there must be a chain of evidence so complete as not to leave any reasonable ground for conclusion consistent with innocence of the accused and must show that in all human probability, act must have been done by accused.

24. The prosecution has relied upon the following circumstances – (i) robbery being the motive, (ii) the mother of the deceased having stated that the petitioner/accused had seen her keeping case and jewellery in the almirah, (iii) recovery of bag containing jewellery articles, blood stained knife, blood stained gloves etc., and (iv) purchase of gloves by the petitioner/accused from the shop.

25. The probative value of the evidence that has come on record to prove the aforesaid circumstances will seen by the learned Trial Court at the stage of



trial but certain aspects which have been pointed out the learned counsel for the petitioner needs to advert to for the limited purpose of deciding whether or not the petitioner is entitled to bail in the present case.

26. The shopkeeper, who has been examined as PW-9, has not supported the case of the prosecution and denied that the petitioner purchased gloves from him.

27. *Prima facie* there also seems to be some substance in the submission of the learned counsel for the petitioner that the recovery is shrouded by doubts for the reasons that – (i) bag which was containing the jewellery, the blood stained knife, blood stained gloves, cash etc. and is stated to have been recovered at the instance of the petitioner, was not seized; (ii) recovery was made from an open space on the roof and not from any concealed/hidden place which could only be within the knowledge of the petitioner/accused, and (iii) no independent witness was associated for the purpose of disclosure, which could be missing link in the case of the prosecution based on circumstantial evidence.

28. It is also matter of record that the petitioner was not suspected at the time of registration of FIR on 31.12.2018. Even the charge sheet specifically mentions that CCTV cameras of the surrounding area were also examined by the I.O. but the CCTV footages did not disclose anything about the accused. It is only on 02.01.2019 the petitioner has been suspected by the mother of deceased by stating that about 15 days ago the petitioner had seen her keeping case and jewellery in her almirah.

29. As per FSL report no blood stains were found on the clothes of the petitioner recovered at his instance. The Junior Forensic Chemical Examiner, who was examined as PW-12, has also stated that the fingerprints



matching could have been conducted by the FSL, if a specific request had been made in that regard, which shows that no analysis of fingerprints was requested or done. He further stated that nothing has been found relating to the petitioner/accused through DNA profiling.

30. The probative value of the CDRs, which can only be used for corroboration, will be seen by the learned Trial Court but contention of the learned counsel for petitioner that the CDRs showing the petitioner's presence at his residence which is in the vicinity of the place of incident does not advance the case of the prosecution, is not without merit as there is nothing unusual about the petitioner being present at his residence.

31. The aforesaid circumstances considered in entirety tilts the balance in favour of the petitioner and furnishes the justification for grant of bail to him.

32. That apart, it is also not in dispute that the petitioner is facing incarceration for the last 05 years and all the public witnesses have been examined, therefore, there is no possibility of the petitioner influencing any public witnesses in the event he is enlarged on bail.

33. The petitioner was admittedly granted interim bail during pandemic, but he did not misuse the liberty so granted to him. Therefore, the petitioner is not a flight risk.

34. In so far as another case FIR of the year 2019 alleged to have been registered against the petitioner is concerned, the learned counsel for the petitioner has stated that the said case does not pertain to the petitioner as he is in jail since 02.01.2019. Even otherwise the said case is of the year 2019 and cannot be a reason to deny bail to the petitioner in the given circumstances of the present case.

35. Having regard to the circumstances discussed above and long



incarceration period of the petitioner, this Court is of the view that the petitioner has made out a case for grant of 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 appear before the Court as and when the matter is taken up for hearing.
 - b) 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.
 - c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
36. The petition stands disposed of.
37. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.
38. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
39. Order *dasti* under signatures of the Court Master.
40. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 28, 2024/dss