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

+ **BAIL APPLN. 3256/2024**

MAHESH GUPTA

.....Petitioner

Through: Mr. Murari Tiwari, Mr. Rahul kumar,
Mr. Arvind Pandey, Mr. Manoj
Kumar and Ms. Amita Padhi,
Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for the
State.

Mr. R.K. Tarun, Ms. Capt. Subedita
Rani, Ms. Aditi Shivadhtri and Mr.
R.R. Bharti, Advocates for the
respondent.

Insp. Jitender Singh, Insp. Sunil
Kumar, PS Prashant Vihar

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

12.11.2024

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By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks regular bail in case FIR No.161/2020 dated 15.06.2020 registered under section 302 of the Indian Penal Code, 1860 ('IPC') at P.S.: Prashant Vihar, Rohini, Delhi. Consequent upon completion of investigation, offences under sections 201/120-B/34 of the IPC have been added *vide* charge-sheet dated 14.09.2020.

2. Notice on this petition was issued on 09.09.2024.
3. Status report dated 16.10.2024 has been handed-up in court today.
The same is taken on record.



4. Nominal roll dated 09.10.2024 has also been received from the concerned Jail Superintendent.
5. Mr. Murari Tiwari, learned counsel appearing for the petitioner submits, that the deceased Ashish Gupta was the brother-in-law of the petitioner (being his sister's husband) and the subject FIR was registered on the complaint of the brother of the deceased.
6. Mr. Tiwari submits that the name of the petitioner has been brought into the matter only on the basis of the statement of one Mohd. Chand Siddiqui recorded under section 161 of the Code of Criminal Procedure 1973 ('Cr.P.C.,'), who the prosecution claims was a vendor selling bottles of water near the middle gate of the DDA ground outside 'Japani Park', from where the body of the deceased was recovered.
7. It is submitted, that it is relevant to note that in his statement recorded under section 161 of the Cr.P.C., Mohd. Chand had said that on 13.06.2020 he saw 03 persons in a car, one of whom was the deceased who was sitting next to the driver; as well as the petitioner who was sitting in the backseat. Mohd. Chand had further stated that he had seen these 03 persons since they drove-up to him in the car; purchased some water; and thereafter left towards the DDA ground.
8. Mr. Tiwari points-out however, that in his deposition recorded as PW-2 before the learned trial court, Mohd. Chand has resiled *on every aspect* of his statement recorded under section 161 Cr.P.C., except to say that he used to run a *rehri* of cold drinks, bottled water and chips at a certain gate of Japani Park. It is pointed-out that PW-2 has even denied, that he was at all present on 13.06.2020 at about 3:00 p.m. at



the spot; or that any car approached his *rehri* or that 02 persons were sitting in the front seat and 01 was sitting in the back seat of the car; or that the said persons purchased a bottle of water from him, after which the car left towards the DDA ground with the said 03 persons.

9. Mr. Tiwari argues, that since Mohd. Chand was the only so-called eye-witness who is alleged to have seen the petitioner in the backseat of the car, but has since turned hostile, there is no witness or other evidence or material whatsoever available with the prosecution to even identify that the petitioner was present at the DDA ground near Japani Park on the relevant date and time.
10. It is further argued that that the prosecution has cited *45 witnesses* in the chargesheet and in the supplementary chargesheet, out of which *only 09 witnesses* have so far been examined; but in the meantime, the petitioner has served almost 4½ years in judicial custody as an under trial.
11. In the circumstances, it is prayed the petitioner deserves to be enlarged on regular bail.
12. On the other hand, opposing the grant of bail, Mr. Tarang Srivastava, learned APP appearing on behalf of the State submits, that the case turns on circumstantial evidence; that the petitioner is the main conspirator in the murder of his brother-in-law along with his associate Lokesh Garg; and that certain articles belonging to the deceased have been recovered from the possession of the petitioner from his office at Ram Nagar Colony, Nangloi, Delhi including a gold chain, gold ring, wrist watch, spectacles, bank cards and visiting cards. Furthermore, it is contended that on 27.06.2020a plastic rope



and a small towel used in the commission of the crime have also been recovered at the petitioner's instance from a vacant plot in Nilothi, Delhi.

13. Learned APP has also contended that as per the CDRs of the mobile-phones of the petitioner and his co-accused persons, it transpires that they were regularly talking to each other; and the CDR of the mobile-phone belonging to the co-accused Lokesh Garg shows that the latter was present near the scene of the crime on 13.06.2020, where he was spotted by Mohd. Chand just before the murder.
14. Mr. Srivastava argues, that the cause of death as narrated in the Post-Mortem Report dated 13.07.2020 is 'ligature strangulation', which the prosecution will show correlates with the plastic rope and small towel recovered at the petitioner's instance.
15. Other things apart, learned APP submits that another prime witness PW-6 Sachin Gupta, who is the complainant and brother of the deceased, is yet to be examined before the learned trial court.
16. The court has also heard Mr. R.K. Tarun, learned counsel who is present on behalf of the complainant Sachin Gupta. Learned counsel has argued that the complainant would establish that the petitioner had motive to kill the deceased Ashish Gupta, since the petitioner had taken loan from the deceased, which he had failed to repay.
17. Mr. Tarun also argues that witnesses to the fact that such loan had been taken, are also yet to be examined at the trial.
18. Furthermore, Mr. Tarun submits that it is also their contention that the petitioner had purchased a term insurance policy in the name of the



deceased, with the petitioner's sister as nominee, which was another motive for the petitioner to have done-away with the deceased.

19. Mr. Tarun has also drawn attention to earlier orders of Co-ordinate Benches of this court made on 15.04.2021 in BAIL APPLN. No.3581/2020 and on 12.09.2022 in BAIL APPLN. No.87/2022, to submit that the petitioner was declined bail first on the ground that the witnesses Mohd. Chand Siddiqui and Poonam Garg were yet to be examined; and in the second round, relief was again denied by a detailed order of a Co-ordinate Bench of this court.
20. On point of fact however, Mohd. Chand Siddiqui and Poonam Garg have since been examined.
21. Nominal Roll dated 09.10.2024 received from the jail shows that the petitioner has already spent about 4½ years in judicial custody as an undertrial; that he has no other criminal involvement; that his overall jail conduct has been 'satisfactory'; and that he has been serving as a 'sahayak' in jail.
22. Furthermore, the nominal roll also shows that the petitioner has been granted interim bail on 02 prior occasions, in May 2024 and August 2024; and there is no allegation that he misused the liberty so granted.
23. Upon an overall conspectus of the facts and circumstance of the case, what prevails with the court *at this stage* are the following considerations :
 - 23.1. That the petitioner has already been in judicial custody for about 4½ years as an undertrial, whereas only 09 out of 45 prosecution witnesses have so far been examined at the trial; and that therefore trial is unlikely to conclude anytime soon;



- 23.2. That the presence of the petitioner along with the deceased was sought to be proved by the prosecution on the statement of PW-2 Mohd. Chand, who has since resiled from the statement he had given under section 161 of the Cr.P.C., and has turned hostile, even disputing his very presence at the spot where he is supposed to have seen the petitioner; and
- 23.3. Though it has been contended that the complainant Sachin Gupta, who is the brother of the deceased, is yet to be examined before the learned trial court, the record shows that Sachin Gupta is only a witness to the identification of the body of his brother, the deceased; and it is not the prosecution case that Sachin Gupta was either present at the spot or that he was otherwise being cited for identifying the petitioner's presence at the spot.
24. In the circumstances of the case, the court is persuaded to admit the petitioner – **Mahesh Gupta s/o Ram Mohan Gupta** – to *regular bail* pending trial, subject to the following conditions :
- 24.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 24.2. The petitioner shall furnish to the I.O./S.H.O. a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 24.3. If the petitioner has a passport, he shall surrender the same to



the learned trial court and shall not travel out of the country without prior permission of the learned trial court;

- 24.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 24.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
25. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
26. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
27. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
28. The petition stands disposed-of.
29. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 12, 2024/ss