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

+ **BAIL APPLN. 3646/2024**

MOHD WASIM

.....Petitioner

Through: Mr. Saurav Sharma, Mr. Shikhar Mittal, Mr.
Shantanu, Mr. Sidak Singh Kalra, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Priyanka Dalal, APP
Inspector CL Meena, PS Kamla Market
Inspector Vipin Kumar, PS V.K South

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
17.12.2024

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1. This is a petition filed under Section 483 of the BNSS, 2023 seeking regular bail in F.I.R No. 580/2018 under Section 302/394/411/120B/34 of IPC, 1860 registered at Police Station Vasant Kunj (South).
2. As per the FIR, it is stated that information was received from Rahul that Rahul along with Rehmat and Mohd. Wasim (the petitioner) together went to A-82, Vasant Kunj Enclave, New Delhi being the residence of one Mala Lakhani and thereafter stabbed her as well as her domestic help, Kishan Bahadur. They realized their mistake and confessed the crime to the PS Vasant Kunj (South).
3. It is stated by Mr. Sharma, learned counsel for the petitioner that the petitioner was a captive accomplice and was only asked to clean the crime



scene at a knife point by both Mr. Rahul and Rehmat. Further, the petitioner was called as a substitute driver for the deceased and had no prior motive and intention along with the other two accused.

4. He also states that there is no evidence linking the petitioner with the murder weapon or with the blood-stained clothes. The petitioner had already been incarcerated for a period of more than 6 years 1 month. As of today, only 11 witnesses out of 36 have been examined. There are material discrepancies in the evidence as well as delay in trial.

5. A perusal of the charge sheet shows that the petitioner was arrested on the basis of confessional statement of Rahul and all 3 accused including the petitioner came to the police station to confess their crime in the Hyundai Verna Car of the deceased. The body of the deceased and the blood-stained clothes as well as the weapon used for the commission of offence were recovered at the instance of all the 3 accused.

6. In addition, the DVR of the CCTV of the house/crime scene was seized from the residence of the petitioner.

7. The inconsistencies, if any, in the testimony of the witnesses will be tested at the time of final arguments and not at this stage.

8. Recently, the Hon'ble Supreme Court in "***X vs. State of Rajasthan & Anr.***" in ***SLP (Crl) No. 13378 of 2024*** observed that bail should not be granted in serious offences once the trial has commenced. Relevant portion of the said judgment is extracted below:-

"14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the



bail application of the accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.”

9. Statement of the petitioner recorded under section 164 of CrPC also shows the involvement of the petitioner in the crime.

10. For the said reasons, I am not inclined to entertain the petition at this stage.



11. It is clarified that the observations made herein above are only for the purpose of deciding this petition and will have no effect on the merits of the case pending.

12. The petition is dismissed.

JASMEET SINGH, J

DECEMBER 17, 2024/sp

Click here to check corrigendum, if any