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

+ **BAIL APPLN. 886/2025**

ABHAY KANT MISHRA

.....Petitioner

Through: Mr. Sameer Sidhar, Advocate

versus

THE STATE OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for the State
with SI Parmender Kumar PS Nihal
Vihar.

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

ORDER

23.04.2025

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1. By way of the present application, the applicant is seeking regular bail in case arising out of FIR No. 112/2024, registered at Police Station, Nihal Vihar, Delhi, for the offences punishable under Sections 201/302/34 of the Indian Penal Code, 1860 (hereafter 'IPC').
2. Briefly stated, the facts of the present case are that on 11.01.2024 PCR call had been received at police station Nihal Vihar informing that the tenant had expired at B-103, B Block Laxmi Park, Nihal Vihar, Delhi, i.e. the residence of the informant, and it appeared to be an ordinary death. Thereafter, the police officials had reached at the place of the incident and had found the deceased lying on the bed. Thereafter, the body of the deceased had been inspected and a ligature mark had been observed. During the course of investigation, one piece of rope had been found lying on the head of the bed, one piece of muffler had been found lying below the neck



of the deceased and one kitchen knife had been lying on bed having small muffler threads on it and three bottles of alcohol had also been lying under the bed and another piece of muffler had been lying in the corner near the stairs. During the course of investigation, the family members of the deceased revealed that the he had come to Delhi, along with CCL “H” and Abhay in search of job and thereafter they had started living together.

3. On 16.01.2024, post mortem report had been received, which states that *“Death is Due to asphyxia as a result of ante-mortem strangulation. However, viscera and blood has been preserved to rule out any intoxication”*. On 16.01.2024, the present FIR under Sections 201/302/34 of IPC had been registered at PS Nihal Vihar. Thereafter, the accused/applicant herein and the co-accused CCL “H” had been arrested and sent to judicial custody.

4. It is pertinent to mention that on 05.08.2024, the accused/applicant herein moved the first bail application before this Court and the same had been withdrawn before the coordinate bench of this Court, with the liberty to file an appropriate petition at a later stage.

5. The learned counsel appearing for the applicant argues that the applicant herein has been falsely implicated in the present case. It is argued that there is no incriminating evidence against him and the investigation has already been completed and the chargesheet has already been filed. It is argued that the applicant herein had not been present at the time of incident at the place of incident. It is submitted that there had been no previous enmity between the applicant and the deceased and that the applicant has clear antecedent. It is argued that the post-mortem report reveals that it is a clear case of suicide and not of murder. It is argued that the applicant and



the co-accused CCL “H”, on noticing the deceased hanging by neck, had simply brought him down, however, on realising that he had passed away already, they had run away from the place of incident. It is further argued that the present case is at the stage of framing of charge and trial will take considerable time to conclude. It is further submitted that the applicant herein is in custody since 17.01.2024. It is therefore, prayed that the applicant be released on regular bail.

6. The learned APP for the State, on the other hand, opposes the present bail application and states that the allegations levelled against the present accused/applicant are serious in nature. It is further stated that the complainant and the material witnesses are yet to be examined. It is further submitted that there is sufficient incriminating material against the applicant herein. Therefore, it is prayed that the bail application of the accused be rejected.

7. This Court has heard arguments addressed on behalf of both the parties and has perused the material available on record.

8. It is apposite to mention here that the Hon’ble Supreme Court in *X v. State of Rajasthan & Anr.*: 2024 INSC 909 has emphasized that in serious offences like rape, murder, dacoity, etc., bail should generally not be granted once the trial has started, especially based on the victim's testimony as granting bail at that stage can affect the fairness of the ongoing trial. The relevant portion of the aforesaid judgment is set out 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. It is noteworthy, that during the course of the investigation, the co-accused CCL “H”, in the presence of his father, had stated that he, along with the applicant herein had strangled the deceased with a rope and in order to destroy the evidence, they had made it appear as if the deceased had hanged himself. They had tied a muffler around the deceased’s neck and had attempted to hang him. However, when they had failed to do so, they had cut the muffler using a knife and fled from the spot. While fleeing, they had taken the deceased’s mobile phone with them and had thrown it into the river at Haridwar.

10. During investigation, Swaminath, neighbour of the deceased, in his statement recorded under Section 161 of Cr.P.C had stated that accused CCL “H” had taken his mobile phone and had called the applicant/accused and thereafter both the accused had been quarrelling with the deceased in



their room.

11. It is pertinent to note that during the course of investigation, the mobile phone location of the applicant herein and the deceased had been found to be at the same place in Noida, Uttar Pradesh, on 11.01.2024, and the last location on 12.01.2024 at about 12:24 PM to 05:10 PM, location of both the mobile phone had been same i.e, at Aneki Hetmaput, Roshanabad, Haridwar and thereafter the deceased person's mobile phone had been allegedly thrown in river. As per investigation, the deceased was last seen on 10.01.2024 at about 9:30 PM.

12. During investigation, Gaurav, employer of the deceased, in his statement recorded under Section 161 of Cr.P.C had stated that the deceased had been disinterested in his work and wanted to return to his village after receiving his salary. On 10.01.2024 at 8:30pm, Gaurav had paid the deceased his salary and had again asked him as to whether there had been any problem with him. However, upon arrival of the applicant herein, the deceased appeared to be scared of him. The applicant had also taken salary of the deceased from him and had kept it with himself.

13. Thus, keeping in view the overall facts and circumstances of the case, gravity of offence and nature of serious allegations levelled against the accused persons, and the fact that the post-mortem report confirms the cause of death as ante-mortem strangulation, and that the mobile phone location of the applicant herein had been found to be the same as that of the deceased at the relevant time, the charges are yet to be framed against the accused persons, the witnesses are yet to be examined, this Court is of the considered opinion that no ground for grant of regular bail to the applicant herein is made out.



14. Accordingly, the present application for grant of regular bail stands dismissed.

15. Nothing stated herein shall tantamount to be an expression of opinion on the merits of the present case and the observations made in the present order are only for the purpose of deciding the present bail application.

16. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 23, 2025/zp

[Click here to check corrigendum, if any](#)