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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1901/2024**

RITIK@TILLU

.....Petitioner

Through: Mr. Ashish Arya, Mr. Krishan
Kumar, & Mr. Gaurav Pal Singh,
Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for the
State with SI Pravesh Rawat
P.S.: Sangam Vihar, New Delhi.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI
ORDER
08.01.2025

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By way of the present petition filed under section 439 read with section 428 of the Code of Criminal Procedure, 1973, the petitioner seeks regular bail in case FIR No.0175/2021 dated 19.04.2021 registered under sections 394/34 of the Indian Penal Code, 1860 ('IPC') at P.S.: Sangam Vihar, Delhi. Consequent upon completion of investigation, allegations of offences under sections 302/411 IPC have been added *vide* chargesheet dated 21.07.2021.

2. Notice on this petition was issued on 28.05.2024.
3. Status Report dated 22.07.2024 has been filed in the matter.
4. Nominal Roll dated 20.07.2024 has been received from the Jail Superintendent.



5. In line with the mandate of the Supreme Court in ***Jagjeet Singh & Ors. vs. Ashish Mishra @Monu &Anr.***,¹ intimation to the complainant/next-of-kin of the deceased was issued *vide* last order dated 17.12.2024. Mr. Tarang Srivastava, learned APP appearing for the State submits, on instructions of the Investigating Officer ('I.O.'), that intimation was served upon the complainant/next-of-kin of the deceased. However, no one is present on behalf of the complainant/next-of-kin today.
6. The court has heard Mr. Ashish Arya, learned counsel appearing for the petitioner and learned APP for the State.
7. Mr. Arya has raised the following 04 principal grounds in support of his bail plea :
 - 7.1. *Firstly*, learned counsel submits, that the alleged eye-witness to the incident - PW-1/Arun Kumar - has turned hostile in the course of his deposition dated 09.06.2023 recorded before the learned trial court. Learned counsel submits, that PW-1 has specifically stated that he has no knowledge as to who had caused injuries to the deceased - Mohd. Azad - or how the deceased sustained injuries; nor does he have any knowledge about the case. Mr. Arya points out that even during PW-1's cross-examination after being declared hostile, the prosecution has not been able to elicit anything to the contrary from PW-1; and that therefore the prosecution's case has faltered seriously;

¹ (2022) 9 SCC 321 at paras 22,23



- 7.2. *Secondly*, learned counsel for the petitioner submits, that the petitioner's identity has not been established since no Test Identification Parade ('TIP.') was conducted; and the Investigating Officer ('I.O.') has also contradicted himself by initially denying in the chargesheet that there was any CCTV camera around the scene of the crime, but subsequently having recorded that the accused persons have been caught fleeing on a CCTV camera installed at some distance from the scene of the crime. It is argued therefore, that there is no evidence to prove the identity of the petitioner, and more particularly, the presence of the petitioner at the scene of the crime at the relevant date and time. Learned counsel for the petitioner further contends, that even assuming, without admitting, that the petitioner is seen on some CCTV footage from a camera installed *at some distance* from the crime scene as *running*, does not establish his connection with the incident.
- 7.3. *Thirdly*, learned counsel argues that the Post-Mortem Report dated 26.04.2021 of the deceased records the cause of death as septicemia, which could not possibly have been caused by any direct act on the petitioner's part.
- 7.4. *Lastly*, in this backdrop, Mr. Arya argues, that as is seen from nominal roll dated 20.07.2024 received from the Jail Superintendent, the petitioner has now spent about 03 years and 07 months in judicial custody as an undertrial; and though the chargesheet has cited 33 prosecution witnesses, only 09 of them have so far been examined and trial is bound to take a very long



time. In the circumstances, it is prayed that the petitioner deserves to be enlarged on regular bail.

8. Opposing the grant of bail, learned APP points-out, that as narrated in the status report filed in the matter, the Aadhar Card of the deceased, as well as the clothes worn by the petitioner during the commission of the offence have been recovered at the instance of the petitioner.
9. Furthermore, learned APP argues that the petitioner could not be put through a TIP since he refused to participate in the TIP proceedings.
10. It is also submitted that the post-mortem report records the cause of death as : septicemia as a complication of spinal cord trauma due to blunt force impact, which is sufficient to cause of death in ordinary circumstances. Accordingly, the essential cause of death is blunt force impact on the spinal cord of the deceased, which was caused by being hit with a bamboo stick, which led to septicemia and eventually to the death of the deceased.
11. Upon being queried however, Mr. Srivastava clarifies that the bamboo stick, which is stated to have been the weapon of offence, was recovered at the instance of the co-accused and not the petitioner.
12. Upon a conspectus of the facts and circumstances of the case, the following considerations weigh with the court at this stage :
 - 12.1. The record shows that PW-1, who was produced by the prosecution as the eye-witness, has turned completely hostile on all aspects; and has in fact disclaimed any knowledge of who caused injury to the deceased and otherwise about the case.



- 12.2. No CCTV footage is available *of the place of the incident*; and the CCTV footage being cited by the prosecution supposedly only shows the petitioner and other co-accused running from a certain place, and the prosecution is yet to show that the accused persons were running from the crime scene.
- 12.3. Though the post-mortem report does record that the cause of death is septicemia arising from spinal cord trauma due to blunt force impact, there does not appear to be any material to substantiate that it was the petitioner who caused the blunt force trauma.
- 12.4. Nominal roll dated 20.07.2024 shows that the petitioner has undergone judicial custody of about 03 years and 07 months as an undertrial in the matter, in a case where only 09 of 33 prosecution witnesses have so far been examined. The trial of the matter will therefore inevitably take a long time to conclude.
- 12.5. Though the nominal roll records the petitioner's jail conduct as being 'unsatisfactory', the petitioner has already suffered the prison punishment meted-out to him for such conduct. It is also noted that petitioner has no other criminal involvements.
13. On a balance of all considerations, and in particular the fact that the eye-witness in the matter has turned completely hostile; that the petitioner has suffered judicial custody for about 03 years and 07 months as an undertrial; and that the trial in the matter is bound to take a long time to complete, this court is persuaded to admit the



petitioner – ***Ritik @ Tillu S/o Mukesh Kumar*** – to regular bail, subject to the following conditions :

- 13.1. 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;
- 13.2. The petitioner shall furnish to the I.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;
- 13.3. 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;
- 13.4. 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
- 13.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
14. 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.



15. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
16. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
17. The petition stands disposed-of.
18. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 8, 2025/ss