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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 17.01.2025*+ **BAIL APPLN. 2800/2024****SALMAN ALIAS SAMMA**

.....Petitioner

Through: Mr. Rajesh Pandey and Mr.
Gaurav Bidhuri, Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for the
State with SI Ramavtar, P.S.
Hauz Khas**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 has been filed on behalf of the applicant seeking grant of bail in case bearing FIR No. 08/2016 for offence punishable under Section 302/34 of Indian Penal Code, 1860, registered at Police Station Hauz Khas, New Delhi.

2. The brief facts of the present case are that the FIR was registered on 02.01.2016, following an incident in which under-trial prisoners, being transported back to Tihar Jail from Saket Court Complex in a jail van, began fighting with each other. Head



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Constable Gulab Singh, who was posted with the 3rd Battalion, registered the complaint. He was assigned the duty of transporting the under-trial prisoners along with Constable Chhote Lal, Constable Mohan Lal, Constable Sawan, and Constable Bhanu Pratap. A total of 53 under-trial prisoners were in the van, comprising 46 ordinary under-trial prisoners and 4 younger prisoners aged 18-21. The young prisoners were locked in the inner compartment of the van, while the remaining prisoners were in a separate compartment, both compartments secured by Constable Sawan, who kept the key and sat in the driver's cabin with Constable Mohan Lal and the driver. The other two constables sat at the back of the cabin. At about 01:35 PM, while passing through the IIT Flyover, Head Constable Gulab Singh noticed through the CCTV screen installed in the van that the prisoners were fighting. He immediately informed the Control Room via wireless and parked the van by the roadside. Looking through the van's window, he saw that under-trials Ravinder @ Raju, Vishal @ Bunty (from the inner compartment), and Salman were assaulting under-trial Manoj @ Bobby, threatening to kill him. Despite using tear gas spray through the van's window and instructing them to stop, the assault continued. Gulab Singh called the PCR at 100 and drove the van to the nearest police station, Hauz Khas. Upon inspection by the PCR team and police staff, they found Manoj @ Bobby injured, bleeding, and unconscious. A white shirt, belonging to Vishal @ Bunty and Ravinder @ Raju, was found at the scene. Vishal @ Bunty was seen with his right foot on Manoj @ Bobby's chest. Manoj @



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Bobby was transported to AIIMS Trauma Center via PCR van, where he was declared brought dead. Consequently, the FIR was registered under Sections 302/34 of the IPC, with the allegations that Ravinder @ Raju, Vishal @ Bunty, and Salman had beaten Manoj @ Bobby with the intent to kill him.

3. The learned counsel appearing for the applicant Salman argues that the applicant has been falsely implicated in the present case, and there is no incriminating material connecting him to the alleged offence. It is asserted that no public witnesses have been examined in this case, and only police witnesses have testified, and the same thus eliminates any risk of influencing witness. The learned counsel further points out that the post-mortem report indicates that the deceased died due to the combined effects of smothering and strangulation, which are sufficient to cause death in the ordinary course of nature. However, PW Gulab Singh stated that the deceased was assaulted with kicks and elbows, which could not have caused such death. Additionally, it is argued that the shirt found at the crime scene does not belong to the applicant herein. It is also contended that the weapon used in the offence has not been recovered, nor has any motive or malice been attributed to the applicant. The learned counsel also argues that the applicant has been in judicial custody for the past four years, and the trial is progressing at a very slow pace; therefore, the present bail application be allowed.

4. On the other hand, the learned APP for the State highlights the



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gravity of the offence, and argues that the incident occurred while the accused were being transported back to Tihar Jail from Saket Court Complex. It is contended that the defence raised by the applicant's counsel pertains to matters which are to be examined during the trial. It is contended that the seriousness of the offence is underscored by the fact that the deceased was beaten to death inside a heavily secured jail van. Furthermore, it is argued that the accused persons had a clear motive to commit the murder and draws the Court's attention to the chargesheet, which outlines the motive behind the killing.

5. This Court has **heard** arguments advanced on behalf of both the parties and has perused the case file.

6. Since the present case involves commission of offence under Section 302 of IPC, it shall be apposite to take note of the decision of Hon'ble Supreme Court in *Vijay Kumar v. Narendra & Ors.: (2002) 9 SCC 364*, wherein the factors to be taken into consideration while adjudicating a bail application were discussed. The relevant extract of the decision is set out below:

"10. ...The principle is well settled that in considering the prayer for bail in a case involving serious offences like murder, punishable under Section 302 IPC, the court should consider the relevant factors like the nature of the accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after the have been convicted for committing the serious offence of murder...".

7. Having gone through the material placed on record, this Court



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is of the opinion that, as evident from the record and the chargesheet filed, the offence in question took place inside a jail van used for transporting under-trial prisoners from Tihar Jail to the courts and back to the Jail. The deceased and the accused were already facing criminal charges in separate cases. The jail van was heavily guarded, with two guards stationed at the front and two at the rear. The complainant stated that while en route from Saket Court to Tihar Jail, the CCTV camera in the driver's cabin showed the inmates fighting with each other, and upon stopping the van on the flyover and looking inside, the complainant witnessed that the accused persons namely Vishal @ Bunty, Ravinder @ Raju, and the applicant Salman were assaulting the deceased. He noted that a shirt belonging to accused Vishal was lying near the body of the deceased, who was lying unconscious and bleeding heavily. While the accused persons had surrounded him, Vishal had placed his foot on the deceased's chest. Despite giving them warnings, the accused persons continued to assault the deceased. Though the CCTV footage captures the incident, the details regarding who opened the compartment door and who smothered and strangled the deceased will only be clarified during the trial. At this stage, the evidence or statements of witness cannot be discussed in detail, lest it affects the trial of the accused at a later stage.

8. However, clearly, the seriousness of the offence cannot be overlooked, given that it occurred in a heavily guarded jail van transporting individuals already facing trial. Further, the argument



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that no under-trial prisoner has been made a witness and that only police witnesses are to be examined, implying no chance of conviction, is unmerited. It is well established in criminal jurisprudence that a conviction can be based on the testimony of police witnesses if they are found credible and reliable.

9. Additionally, the chargesheet also outlines the motive for the killing. It is the case of prosecution that the deceased had murdered one Sachin in the year 2009, the brother of co-accused Ravinder @ Raju, and the accused persons had been seeking an opportunity to take revenge on Manoj @ Bobby.

10. In the present case, the prosecution witnesses are yet to be examined, and the gravity of the offence cannot be ignored at this stage. Therefore, considering the overall facts and circumstances of the case, this Court does not find any ground to grant regular bail to the applicant herein.

11. The bail application is accordingly dismissed.

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 17, 2025/A