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

+ **BAIL APPLN. 2885/2024**

LUCKY

.....Petitioner

Through: Ms. Dolly Singh, Advocate.
versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
Insp. Gyan Prakash, PS Kotwali.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

08.01.2025

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1. This hearing has been done through hybrid mode.
2. This is second application under Section 439 read with Section 482 of the CrPC seeking regular bail in FIR No. 409/2016, under Sections 302/394/397/411/34/174A of the IPC, registered at P.S. Kotwali.
3. The case of the prosecution as per the status report dated 26.08.2024 authored by Insp. Jatan Singh, SHO/PS Kotwali is as follows: -

“Most respectfully, it is briefly submitted that on 23/06/16, information regarding dead body lying in Mother Dairy Booth was received at FS Kotwali. The information was reduced in writing vide DD No.9-A and entrusted to SI Vipin Kumar. On the receipt of information SI Vipin along with stall rushed to the spot where a male dead body of unknown person was found lying inside the A/C room of Mother Dairy Booth having sustained injury on the body of the deceased who was later identified as Roshan Lal S/o Sh. Mahipal Singh Yadav R/o VIII-Gazipur, PO- Sandhan, PS- Incholi, Distt. Meerut, UP. On this, all the necessary investigation was taken up and dead body of deceased was preserved in Mortuary Subzi Mandi for further proceedings. No eyewitness was found at the spot. In the light of these facts and circumstances, a case vide FIR No.409/16 dated 23-06-16 U/s 302 IPC was registered at PS Kotwali, Delhi. During investigation, it also surfaced that cash of amount 50 thousand



approximately and a electronic device were also found robbed by the assailants. On the receipt of secret information, accused Kishnu @ Lambu 75/0 Shri Chunnu Singh Chauhan R/O Village Kirti Khera, PS Laoli, Distt. Fatehpur, U.P. was arrested in the present case on 28-06-16, who was spotted near Mother Dairy Booth on the night of incident, by beat officer Ct. Naushad Ali. On interrogation, applicant/accused Kishnu disclosed that he along with his associates namely Lucky (present accused/petitioner) and other two persons namely Bhura and Satey had committed the murder of deceased Roshan Lal in Mother Dairy Booth and robbed cash, device from Mother Dairy Booth. One looted Smart card billing machine, bearing No. H/W Var: Fx 100 -B4, RoHS CE, FAMOCA was recovered at the instance of accused Kishnu from his residence. Charge sheet in the present case was put in court on 24-09-16. The case is pending trial. The next date of hearing in the case is fixed for 04-09-2024. It further stated that accused persons including present applicant Lucky S/o Sh. Satish Kumar R/o H. No. 149 Gali No. 4 Kachchi Colony, Mauzpur, Delhi and two other accused Bhura and Satey were absconding deliberately to avoid their arrest. Proceedings U/s 82/83 CrC were initiated against accused/applicant Lucky and he was declared P.O. on 27-10-16 while the other details of accused Bhura and Satey has not come on file so far, despite sincere efforts.

During further investigation of the case, accused/applicant Lucky was arrested U/s 41-1C CrPC by AATS/North and produced before the court in muffled face. On this, necessary permission was obtained from Ld. M.M. and accused/applicant Lucky was interrogated at length. Accused/applicant Lucky confessed the commission of offence of the present case and arrested in the present case on 23.04.2022 accordingly. The accused/applicant was subjected to participate in judicial TIP proceedings but he declined the opportunity and did not participate in TIP proceedings. Subsequently, accused /applicant was obtained on two days PC remand from the Ld. Trial Court. During the PC Remand, accused /applicant Lucky disclosed that he along with his friend Kishnu @ Lambu, Bhure and Sate murdered Roshan Lal and robbed Rs. 50,000/- from his shop. He also took driving license of deceased for his personal use as he had lost his own driving license. Accused Lucky correctly pointed out the place of incident. The Driving License of deceased Roshan Lal was recovered at his instance from the home. In this regard, he stated that he is Auto Driver and he lost his driving license, so he kept the license of deceased with him for use in any accident case or emergency. The license got verified from the transport authority Meerut and found genuine. The analysis of CDR of mobile phone of accused Lucky reveals that he was



present in Kucha Natwa i.e. place of incident at the time of incident. After completion of investigation, supplementary charge sheet was filed before the Ld. Court on 22.07.22.”

4. Learned counsel appearing on behalf of the applicant submits that the co-accused, who has been assigned similar role to the present applicant, has already been granted bail by this Court *vide* order dated 12.04.2019 in BAIL APPL. 604/2019. It is further pointed out that the present applicant has been in judicial custody since 23.04.2022. It is further submitted that the first application seeking regular bail on behalf of the present applicant was dismissed as withdrawn on 09.02.2024. It is submitted that the material witnesses have already been examined before the learned Trial Court and the applicant is not involved in any other previous offence.
5. *Per contra*, learned APP for the State submits that the applicant is not entitled to parity with respect to the bail granted to the co-accused on the ground that he was declared proclaimed offender and was arrested after a period of 6 years on account of which trial has been delayed. Learned APP for the State, on instructions from the Investigating Officer, further submits that the present applicant is not involved in any other offence.
6. Heard learned counsel for the parties and perused the record.
7. As per case of the prosecution, the evidence with regard to the present applicant is similar to that of co-accused Kishnu @ Lambu inasmuch as they were last seen together with the deceased by PW-2, i.e., Constable Naushad. It is further noted that there are no other eye-witnesses or public witnesses in the present case.
8. In the facts and circumstances of the present case, the present application is allowed. The applicant is directed to be released on bail, on his



furnishing a personal bond of Rs. 20,000/- with one surety of like amount, who shall be the family member of the applicant, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
 - vi. The applicant shall report at PS Kotwali once in a week, i.e., on every Friday at 03:00 PM and the concerned officer is directed to release him by 04:00 PM after recording his presence and completion of all the necessary formalities.
9. The present application is allowed and disposed of accordingly.
10. Pending applications, if any, also stand disposed of.
11. Needless to state that, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.
12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.



13. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

JANUARY 08, 2025/sn

Click here to check corrigendum, if any