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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2981/2024**
OM SINGHApplicant

Through: Mr. Kartickay Mathur,
Adv.

versus
STATE (NCT OF DELHI)Respondent
Through: Mr. Aashneet Singh, APP
for the State
Inspector Shravan Kumar,
PS- SJ Enclave

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **07.04.2025**

1. The present application is filed seeking regular bail in FIR No. 282/2020 dated 21.06.2020 for offences under Sections 302/34 of the Indian Penal Code, 1860 ('IPC') registered at Police Station Safdarjung Enclave.

2. Brief facts of the case are that upon receiving information, the police officials reached House bearing No. A-1/252, Upper Ground Floor, Safdarjung Enclave (hereafter "**place of incident**"). It is alleged that upon reaching the place of incident, the injured victim namely– Sh. Baldev Raj Chawla who is 94 years of age, who resides at the place of incident, was found in the dining room, with marks of being tied on his hands. It is alleged that the wife of the injured victim namely – Smt. Kanta Chawla who was 88 years of age, was found in another room lying dead on the bed, with knife injury marks on her neck and her hand. It is stated that the door of the house was broken and blood was found at the place of incident, along with white hair and a jaw with teeth lying there. The contents of the room and



cupboard were stated to be ~~searched~~. It is stated that the victims were taken to Safdarjung Hospital, where the doctor declared Smt. Kamla Chawla brought dead and the injured victim Sh. Baldev Raj Chawla was admitted in the hospital for injuries inflicted due to assault with knife.

3. In his statement under Section 161 of the Code of Criminal Procedure, 1973 ('CrPC'), the injured victim stated that he had appointed a new guard namely-Rajesh about 10 days prior to the incident. He stated that on 20.06.2020, at around 8:00 pm when the bell rang, his wife ('deceased') opened the door, while he was in the inner room. He stated that when he reached the drawing room two boys were taking the deceased to the bedroom and one boy came and tied his hands. He stated that the three boys took cash and valuables kept in the cupboard and ran away from the place of incident. He stated that thereafter he somehow freed his hands and managed to inform Mr. Jagdish Sapra, who informed the Police about the incident.

4. During investigation, the CCTV Footage from the spot was obtained and analysed, which showed three suspicious persons coming out of the street.

5. From the Call Detail Record (CDR) of the accused Rajesh's mobile number, the taxi driver namely-Rajender was contacted by the Police officials. The taxi driver stated that he had picked up four Nepali persons from Safdarjung Enclave on the previous night, to take them to Lakhimpur to go to Nepal. On receiving the location of Rajesh, 4 accused persons namely (i) Rajesh (ii) Gyanander (iii) Om Singh (applicant) and (iv) Pramod were arrested on 21.06.2020 on identification by the taxi driver Rajender, and case property (cash and jewellery) was also recovered from them. The weapon of offence, that is, the knife,



was recovered at the instance of Gyanander from the park opposite No. A-1/237, Upper Ground Floor, Safdarjung Enclave.

6. Chargesheet in the present case was filed under Sections 302/397/412/120-B/34 of the IPC.

7. The bail application filed by the applicant on an earlier occasion was dismissed *vide* order dated 31.01.2024 passed by the learned Trial Court on the ground that the allegations against the applicant are serious in nature wherein the victim was brutally murdered.

8. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.

9. He submits that the applicant has not been mentioned in the FIR and that the role assigned to him has not been proved by the prosecution. He submits that there are no eye-witnesses in the present case.

10. He further points out that the applicant has been in custody for more than 4 years and the trial has still not concluded. He submits that since the chargesheet has been filed, no purpose will be served by subjecting the applicant to further incarceration.

11. *Per contra*, the learned Additional Public Prosecutor ('APP') for the State vehemently opposes the grant of any relief to the applicant. He submits that the allegations against the applicant are serious in nature and witnesses are yet to be examined.

12. He further submits that at the time of arrest, the accused persons were attempting to flee from the country, being permanent residents of Nepal.

13. I have heard the learned counsel and perused the record.

14. It has been held in a catena of judgments that while considering an application of the accused seeking bail, the Court



would not be justified in going into evidence on record at such depth so as to ascertain probability of conviction of the accused as the same is a matter of trial.

15. The Court, while considering such applications, has to keep certain factors in mind, such as: (i) the nature or gravity of the offense; (ii) the character of the evidence and circumstances unique to the accused; (iii) the likelihood of the accused evading justice; (iv) the potential impact of the release on prosecution witnesses and its societal repercussions; and (v) the probability of the accused engaging in tampering.

16. In the present case the allegations against the applicant are of conspiring in the act of as well as robbing and attacking the 94 year old injured victim Sh. Baldev Raj Chawla and causing the brutal death of the 85 year old deceased Smt. Kamla Chawla.

17. The applicant has been charged for the offence under Section 302 of the IPC for which the minimum punishment is upto life, The Hon'ble Apex Court, recently, in the case of **X v. State of Rajasthan & Anr. : 2024 INSC 909**, in a challenge to the order passed by the High Court of Rajasthan whereby the bail application filed by the accused was allowed observed as under:

“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.”

18. It is well settled that the grant of bail should not be arbitrary or whimsical. Being conscious of the fact that individual liberty holds immense significance, it is incumbent upon the Courts to examine and evaluate, albeit briefly, factors such as the *prima facie* case, the severity of the crime and the accused's likelihood to flee from justice, among other considerations. As noted above the accused persons were arrested when they were attempting to flee to Nepal. In such circumstances the Court must carefully balance the individual's right to liberty with the interests of justice.

19. As per material on record, a new guard namely–Rajesh was appointed at the house of the victims about 10 days prior who was missing on the day of the incident. After obtaining the CDR of Rajesh, the contact information of taxi driver Rajender was found, who had taken the accused persons from Delhi to the Nepal border. Co-accused Rajesh along with the applicant and two other co-accused persons were arrested on identification by the taxi driver Rajender and recovery of the weapon of offence (knife) near a park in Safdarjung Enclave has been made at the instance of co-accused Gyanander and 11 stolen material/ articles like cash and jewellery has been made at the instance of the accused persons. The same is in corroboration with the statement of the injured victim under Section 161 of the CrPC. Moreover, after examining the weapon and considering the Post Mortem



Report of the deceased, the ~~FOCI~~ has opined that the external injury No. 1 and 3 could be caused by the weapon seized.

20. During interrogation, co-accused Pramod disclosed that Rajesh was employed as a guard at the victims' house who told them that the injured is a rich man who lives alone with his wife and they planned to commit the offence. He stated that as per their plan on 20.06.2020, the applicant along with Rajesh and Gyanander went inside the house and that he was waiting outside. The said disclosure is in corroboration with the statement of the injured victim, who had revealed that three boys had entered the house on the night of the incident is also in corroboration with the CCTV Footage obtained from the spot, that shows three suspicious persons coming out of the street.

21. Furthermore, PW5, who is a security guard, has deposed on 13.09.2023 that he had seen Rajesh along with two other persons going out of the colony through the gate, and he has also identified the Rajesh. PW5 was recalled for further examination on 02.04.2025, when he also identified the applicant as well as co-accused Gyanander as the persons who were accompanying co-accused Rajesh and were seen going towards and returning from the house of the victims, on the night of the incident.

22. Accordingly, taking into account the evidence available on record, and the submissions made by the learned counsel for the parties, this Court is of the opinion that *prima facie*, there is cogent material on record at this stage to show the involvement of the applicant, and therefore, this Court is not inclined to grant bail to the applicant at this juncture.

23. The learned APP for the State informs that out of 41 witnesses, 10 have been examined. Thus, in the opinion of this Court, the trial has been proceeding expeditiously, and at this



stage it cannot be presumed that the trial will not conclude in a timely manner.

24. It is pointed out that the applicant has been in custody for more than 4 years. It is trite that long period of incarceration is a factor to be considered while deciding the question of bail. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeer*** : AIR 2021 SC 712, has held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

25. However, in the opinion of this Court, long period of incarceration alone cannot be a single factor for grant of bail especially when the allegations against the applicant are *prima grave* and serious in nature. The applicant is charged for an offence under Section 302 of the IPC wherein the minimum punishment is imprisonment for life. For this reason, even though there has been a long period of incarceration, yet the same cannot be the only reason to grant bail to the applicant at this stage.

26. In view of the above, the present application is dismissed.

27. The learned Trial Court is directed to expedite the trial and conclude the examination of witnesses to ensure that justice is served in a timely manner.

28. It is made clear that the observations made in the present case are only for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

APRIL 7, 2025

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