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

+ **BAIL APPLN. 3841/2024**

DEV KUMAR

.....Petitioner

Through: Mr. Meghan, Advocate.
versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State
with Insp. Pankaj Kumar and SI
Dharmveer, P.S. Chhawla.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

26.03.2025

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1. This hearing has been done through hybrid mode.
2. The present application under Section 483 read with Section 528 of the BNSS seeks regular bail in case FIR No. 115/2023, under Section 302 of the IPC, registered at P.S. Chhawla.
3. The case of the prosecution as per status report dated 17.02.2025, authored by SHO, P.S. Chhawla, against the present applicant is as under: -

“1. That brief facts of the case are that on 20.03.2023, vide D.DNo-18A, a PCR call was received in P.S Chhawla i.e Yaha par ek admi ko unknown gadi hit ki hai jis se dead ho gaya hai ". On receipt of the same, police staff reached at spot i.e Qutub Vihar, Phase-II, Near Hanuman Chowk, Delhi. On the spot deceased friend Subhash s/o Shiv Sampat r/o Vill Pali, P.O- Budhauri, P.S Baberu, Distt-Banda (U.P) was present. He told that on 20.03.2023, in the morning his known Dev Kumar called him on his mobile number and told that something happened with Bharat, who was residing with Dev Kumar. Subhash with Dev Kumar reached near Dev Kumar's rented home, where he found that body of Bharat was lying on road side and his face was injured and blood was present on his face. In the mean while, Dev Kumar, made a PCR call



through one person i.e Yaha par ek admi ko unknown gadi hit ki hai jis se dead ho gaya hai. Subhash felt some foul play and questioned from Dev Kumar that why blood stains are present on his clothes and feet. On this Dev Kumar escaped from the spot. Mobile Crime Team and FSL Crime Team inspected the spot and collected exhibits. On the statement of Subhash above mentioned case was registered and investigation was taken up.

2. That suspect Dev Kumar switched off his mobile phone. Sources were deployed to apprehend the suspect Dev Kumar. On 21.03.2023, on a secret information Dev Kumar was apprehended from near the underpass Chhawla- Goyala Dairy road. Dev Kumar confessed about committing murder of Bharat alone.

3. During the course of investigation above mentioned accused Dev Kumar was arrested. Confession statement of accused Dev Kumar was recorded. During the course of investigation, one eye witness Jagdish s/o Vijay r/o C-Block, Qutub Vihar, Delhi was interrogated. He was present at the time of incident. His statement u/s 161 Cr.P.C was recorded. He told that on 19.03.2023, he along with deceased Bharat and Dev Kumar went for labour work. In the evening, when they were returning, all the three consumed alcohol near Hanuman Chowk. For wages money, Dev Kumar and deceased Bharat quarreled. After that, all the three persons went to the room of Dev Kumar. All the three again consumed alcohol there. After that, Dev Kumar and deceased Bharat quarreled again. Dev Kumar beaten him by leg, he also put deceased Bharat head against the wall. After that, eye witness Jagdish escaped from there.

4. Further eye witness Jagdish statement was got recorded u/s 164 Cr.P.C and he supported his earlier version. During the course of investigation 6. no role of Ajit Fauji and Bobby surfaced.

5. That during the investigation from the room of Dev Kumar, his blood stained pant has been recovered by F.S.L team. Blood stained blankets were recovered. Blood stains were also collected from the floor of the room. Further, PM report of the deceased was obtained and as per P.M Report of the deceased Bharat - 1. Death in this case is due to Asphyxia following ante-mortem smothering along with cranio- cerebral damage (Head injury). 2. Dragging marks (Grazed abrasions) present on the body (All ante mortem in



nature).”

4. Learned counsel appearing on behalf of the applicant submits that the eye-witness/PW-1-Jagdish, in his cross-examination, has been confronted with his statement under Section 164 of the Cr.P.C. which shows that substantial improvements were made by him in his examination-in-chief which was recorded before the learned Trial Court. Attention of this Court has been drawn towards the cross-examination of the aforesaid witness, wherein he has been confronted with his statement under Section 164 of the Cr.P.C., in respect of the fact that he had not stated to the Magistrate that all three including PW-1, Bharat and applicant, had gone to the room of applicant. Similarly, he had admitted that he had not given the date of incident to the learned Metropolitan Magistrate in his statement under Section 164 of the Cr.P.C. It is further pointed out that the police have not placed on record any rent agreement showing that the room in which the alleged incident took place belongs to the present applicant. It is further submitted that report from the FSL with regard to blood spots recovered from the said room is still awaited. It is further submitted that the applicant has been in custody since 21.03.2023 and he has no previous involvement.

5. *Per contra*, learned APP, on instructions of the Investigating Officer, submits that the cross-examination as pointed out by learned counsel for the applicant is with respect to confrontation to the statement recorded under Section 164 of the Cr.P.C., however, in his statement under Section 161 of the Cr.P.C., the said prosecution witness, PW-1, had narrated the entire incident, and in his examination-in-chief recorded before the learned Trial Court, he had deposed on the same lines. It is further stated that a huge amount



of blood was recovered from the room of the present applicant. The fact that the applicant was the tenant in the room has been testified by the statement of the landlord, namely, Yatender Singh Yadav. It is also pointed out that, initially, the applicant had got the PCR call made through one person (PW-6), brother of the deceased, to say that the deceased has been hit by a car because of which he has passed away. It is further stated that PW-6, had received a call from the applicant and when he came down from the house, he saw the present applicant who then took him to a place near his residence saying that his brother, Bharat (deceased), is lying on the road near the house of the applicant. He further stated that the clothes worn by the applicant were stained in blood and when he asked the applicant to remain there. Thereafter, he noticed that the present applicant had already changed his clothes and then, he pushed him and ran away from the spot.

6. Heard learned counsel for the parties and perused the record.

7. PW-1-Jagdish in his testimony recorded before the learned Trial Court has categorically given the details of the events as narrated by him as to how the applicant assaulted the deceased resulting in his death. This Court has also gone through the statement of the said witness under Section 161 of the Cr.P.C., which is on similar lines as his examination-in-chief. The contradiction, as pointed out by learned counsel for the applicant with respect to his statement under Section 164 of the Cr.P.C., would be a matter of trial which will be analysed along with the other evidence which has been placed on record by the prosecution. It is a matter of record that the blood stains were found in the room of the present applicant. The statement of the landlord confirms the fact that the room belonged to the present applicant. The statement of PW-6, brother of the deceased, to whom the applicant had given



a call with regard to the presence of the dead body of the deceased near the house of the applicant also cannot be ignored, at this stage. The FSL report is still awaited.

8. In view of the aforesaid facts and circumstances of the case, the Court is not inclined to grant bail to the present applicant, at this stage.

9. Accordingly, the application is dismissed, at this stage, and disposed of.

10. Pending application(s), if any, also stands disposed of.

11. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein 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

MARCH 26, 2025/bsr

Click here to check corrigendum, if any