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

+ **BAIL APPLN. 3944/2024**

SOFIYAN

.....Applicant

Through: Mr. Javed Ahmad, Ms. Aakriti
Aditya, Advocates

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State
along with Insp. Shiv Prakash, PS:
Alipur

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER
21.01.2025

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1. The present application has been filed seeking grant of regular bail in FIR No. 290/2023 registered at Police Station ('PS') Alipur, Delhi under Sections 302/34 of the Indian Penal Code, 1860 ('IPC').

Brief Facts

2. The facts leading to the registration of the aforementioned FIR are: On April 8, 2023, a PCR call vide General Diary entry no. 15A was received at P.S. Alipur, informing that an individual named Bunty, who had stayed overnight at the Suryadev Rajwara Banquet Hall, was unresponsive. Upon arrival at the location, police officials discovered Bunty in an unconscious state with injury marks on his neck. Bunty was subsequently transported to



the hospital, where he was declared dead, as recorded in MLC No. 225424. Following these events, the subject FIR was duly registered.

3. During the preliminary investigation, CCTV footage of the spot and potential escape routes was analyzed, which led to the identification of the co-accused, Shiva Bhardwaj ('Shiva') based on the distinctive features of his shoes visible in the footage. The footwear was identified by contractor Vikash, which led to the arrest of Shiva. Upon interrogation, Shiva disclosed that he, along with his friend the Applicant herein (Sofiyan) had conspired to murder Bunty, and that co-accused Shiva and the applicant killed the deceased Bunty by strangulating him.

4. It is stated that Shiva disclosed that he had previously stolen Bunty's ATM card a few days prior and withdrawn money. Shiva disclosed that Bunty was demanding the return of the stolen money and threatening to disclose the incident of theft in the village. Shiva stated that he conspired with the Applicant herein to murder Bunty to stop the deceased from making demands.

5. It is stated that the CCTV footage of the ATM of Union Bank of India dated 23.03.2023 was obtained in which accused Shiva was seeing withdrawing money with the stolen ATM card of the deceased Bunty.

6. It is stated that Shiva was apprehended on 08.04.2023 and based on information provided by Shiva, the Applicant herein who is a resident of Meerut, Uttar Pradesh, was arrested on 09.04.2023, with the assistance of local police. It is stated that the shirt and *gamcha* worn by Shiva was recovered at his instance.

7. It is stated that at the instance of the Applicant the deceased Bunty's mobile phone and the *gamcha* allegedly used for strangulation were



recovered from the Applicant's possession. It is stated that the shoes worn by the Applicant and his mobile phone were also seized.

8. It is stated that the post-mortem examination of deceased Bunty, conducted by Doctor on 09.04.2023, concluded that the cause of death was asphyxia resulting from the combined effects of smothering and throttling, which were sufficient to cause death in the ordinary course of nature. The post-mortem report further indicated that all injuries on Bunty's body were ante-mortem in nature and fresh at the time of death.

9. It is stated that during the investigation, the Call Detail Records (CDRs) of the deceased Bunty, the accused Shiva, and the Applicant were analyzed. The CDRs revealed multiple conversations between Shiva and the Applicant starting from 04.03.2023, which, according to the police, were indicative of Shiva seeking the Applicant's assistance in murdering Bunty. It is stated that CDRs corroborates Shiva's disclosure statement. Furthermore, it was determined that the mobile locations of both Shiva and the Applicant were identical on the night of the incident.

10. It is stated that a medical examination of the Applicant was conducted following his arrest, during which it was observed that the Applicant had superficial epithelial peeling at the base of his forefinger nail. It is stated that this finding corroborates the disclosure by Shiva that the Applicant sustained injuries during a scuffle with the deceased.

11. It is stated based on the disclosure made by the accused persons and corroborative evidence collected by the Police a chargesheet in the aforementioned FIR has been filed before the Trial Court and 13 out of 28 witnesses have been examined.



12. It is stated that the remaining witnesses to be examined are official and police witness. It is stated that private witness stand examined.

Submissions

13. Learned counsel for the Applicant submits that the chargesheet has been filed, and key witnesses have been examined. He argues that no incriminating evidence has surfaced against the Applicant.

14. He states that the CCTV footage from cameras installed at the banquet hall, where the incident occurred, does not show any evidence of the Applicant entering the premises.

15. He states that that the prosecution's case relies entirely on circumstantial evidence and that any determination of guilt would be possible only after the conclusion of all prosecution witnesses. He emphasizes that all material witnesses have been examined, and no substantial evidence implicating the Applicant has been brought on record.

16. He states that learned Trial Court denied bail vide order dated 24.04.2024 on the grounds that the allegations against the Applicant are of a serious nature and that the mobile phone of the deceased was recovered at the Applicant's instance. However, he submits that the alleged recovery of the deceased's mobile phone has been fabricated and planted.

17. He states that all material witnesses in the case have been examined, and there is no likelihood of the applicant tampering with evidence. He states that the Applicant is a permanent resident of Meerut, Uttar Pradesh, with deep societal roots, and there is no possibility of him absconding. He states that there is no other case pending against the Applicant.



18. In reply, the learned Additional Public Prosecutor (APP) for the State argues that the allegations against the Applicant are of a grave and serious nature. He states that considering the seriousness of the allegations i.e., that the Applicant conspired with co-accused Shiva to strangle the deceased in a pre-planned manner the Applicant ought not to be granted the bail.

19. He states that there are a total of 28 witnesses in this case, of which only 13 have been fully examined.

20. He states that that there is substantial evidence implicating the Applicant in the commission of the offense of murder, along with co-accused Shiva. He relies upon the contents of the status report dated 27.11.2024.

Analysis and findings

21. This Court has heard the learned counsels for the parties and perused the record.

22. At the outset, this Court observes that as per the Nominal Roll 21.11.2024, the Applicant has been in custody as an undertrial for a period of 1 year, 7 months, and 12 days as of 20.11.2024. During this period of incarceration, the Applicant's conduct has remained satisfactory, and no disciplinary action or punishment ticket has been issued against him. Thus, as on date the Applicant has undergone sentence of one (1) year and nine (9) months approximately. The Applicant is 24 years old approximately and has no other criminal cases pending against him.

23. Prosecution's case rest purely on circumstantial evidence. The prosecution's case against the Applicant primarily relies on the (i) disclosure statement made by the co-accused Shiva, (ii) disclosure statement of the Applicant, (iii) and the recovery of mobile of the deceased from the



Applicant; as well as (iv) the *gamcha* of the Applicant allegedly used for strangulating the deceased, at the instance of the Applicant.

24. The charge-sheet records that the *gamcha* has been sent to the FSL and is awaited. For the present, there is no scientific evidence on record to show that the said *gamcha* was allegedly used in strangulation of the deceased victim. Thus, prima facie at this stage there is no evidence on record that the *gamcha* recovered from the Applicant was used in the commission of the crime.

25. The prosecution is relying upon the CDR analysis of the mobile numbers used of the Applicant and the co-accused to prove the presence of the Applicant along with co-accused Shiva at the spot at the time of incidence. There is no eye witness who has seen the Applicant at the spot on the date of the incidence. The CCTV footage referred to in the charge-sheet also does not pertain to the Applicant but pertains to alleged proof of co-accused Shiva's presence at the spot.

26. The prosecution also relies upon the fact that when the Applicant was brought for medical examination, the concerned Doctor gave an observation with respect to superficial epithelial peeling at the base of nail forefinger ('scratch'). It is contended that the said injury corroborates the disclosure made by the Applicant that during the scuffle with the deceased the Applicant sustained injuries. However, learned APP submits that the said scratch on the Applicant has not been correlated with any scientific evidence recovered from the body of the deceased victim. Thus, the existence of the said scratch also prima facie fails to link the Applicant to the alleged murder.

27. The motive to kill the deceased has been ascribed to the co-accused Shiva and not to the Applicant herein.



28. Since, the prosecution's case against the Applicant is based on circumstantial evidence, the evidentiary effect of evidence led by the prosecution will be appreciated at the conclusion of the trial to assess if the complete chain of circumstances is established beyond reasonable doubt. However, for the present the learned counsel for the Applicant has presented persuasive grounds to dent the case of the prosecution that there is no reasonable ground to believe that the accused has participated and/or committed the offence.

29. The charge-sheet is dated 03.07.2024. The testimony of 13 witnesses, which includes all private and material witnesses stands concluded. The testimony of remaining 15 witnesses comprises of police and official witness. There is thus no threat of the Applicant influencing the testimonies of these remaining 15 witnesses. These are subsequent facts post rejection the regular bail by the learned Trial Court vide order dated 24.04.2024.

30. The Supreme Court in the case of **Javed Gulam Nabi Shaikh v. State of Maharashtra**¹, observed as follows:-

“16. Criminals are not born but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental

¹ (2024) 9 SCC 813



right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

31. In the present case, given that the investigation is complete, the chargesheet has been filed, and all material witnesses have been examined however, there are 15 witnesses whose examination is pending that therefore, it is apparent that the conclusion of the trial will take time. However, since material witnesses have been examined there is no likelihood of the Applicant tampering with the evidence. Moreover, there is no submission by the prosecution that the Applicant is likely to flee from justice.

32. In addition, keeping in view the young age of the Applicant, his satisfactory conduct in the jail during incarceration and the fact that he has no other criminal cases pending against him, this Court is inclined to grant bail to the Applicant.

33. Thus, considering the overall facts and without commenting on the merits of the case, this Court is of the opinion that the Applicant ought to be enlarged on bail. The Applicant is, therefore, admitted to regular bail in in FIR No. 290/2023 registered at PS Alipur, Delhi under Sections 302/34 of the IPC and is directed to be released on furnishing a personal bond in the sum of Rs. 25,000/- with one (1) surety of the like amount subject to the satisfaction of the learned Trial Court and further subject to the following conditions:

- i. Applicant will not leave the country without prior permission of the Trial Court.



- ii. Applicant shall provide his permanent address to the Trial Court, which will be verified by the concerned IO. Additionally, the Applicant shall intimate the said Court and to the IO by way of an affidavit regarding any change in residential address.
 - iii. Applicant shall appear before the Trial Court as and when the matter is taken up for hearing.
 - iv. Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not be switched off or changed without prior intimation to the IO concerned.
 - v. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses or tamper with the evidence of the case.
34. With the aforesaid directions, the present petition is disposed of.
35. Pending applications stands disposed of.
36. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.
37. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
38. Copy of this order be given *dasti* to the learned counsel for the parties under the signatures of the Court Master.
39. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated



as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J
JANUARY 21, 2025/AKT