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

Date of decision: 04.02.2025

+ **BAIL APPLN. 4009/2024**

YASIN @ GILLI

.....Petitioner

Through: Mr. Shivendra Singh, Mr. Jitendra
Kumar and Ms. Prakriti Rastogi
Advocates

versus

THE STATE OF NCT DELHI (THROUGH SHO SUBZI MANDI)

.....Respondent

Through: Mr. Laksh Khanna, APP for the State
along with Inspector Manu Dev, PS
Subji Mandi.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This present bail application has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking regular bail in FIR No.195/2017 registered at Police Station (P.S.) Subzi Mandi under Sections 302/201/120B/34 of Indian Penal Code, 1860 ('IPC').
2. The case of the prosecution as borne out from the status report is that on 07.08.2017 a PCR call regarding a dead body found at Shiv Kunj near Barat Ghar, Malka Ganj was received at PS Subji Mandi vide DD No. 10A.



Thereafter inspection of the crime scene was done wherein it was found that dead body is of a male of about 20-25 yrs was found lying with head injuries and some burn wounds, along with that one bloodstained stone piece, one bloodstained wooden stick & matchbox were also found on the spot. At that time, the deceased could not be identified and no eyewitness was found at the spot. Later, exhibits were seized and FIR bearing no. 195/2017 was registered and investigation ensued.

2.1 It is stated that during investigation, one witness named Mohd. Abid who was an auto-driver, had informed the concerned police officers that in the intervening night of 06th and 07th August, 2017 in the parking lot of Hindu Rao Hospital, he had heard four (4) persons namely Mohsin, Deepak, Anil and the Applicant/Yasin talking to each other that they had killed Ganju (victim) and they were now going to burn his clothes.

2.2 It is stated that based on this information, co-accused Mohsin was arrested by the police on 23.08.2017 and he disclosed about his involvement in this case. He further disclosed that few days ago, the deceased Ganju along with one other boy had beaten his friend i.e. the Applicant/Yasin and since the Applicant/Yasin wanted to take revenge from Ganju, so he convinced all of them i.e. Mohsin, Deepak and Anil to kill Ganju.

2.3 It is stated that co-accused Mohsin revealed that all the above-mentioned four accused took Ganju (deceased) at Shiv Kund Park where the Applicant/Yasin attacked him with a knife, Mohsin attacked with a base bat and other two (i.e., Deepak and Anil) had beaten the deceased with fist & kicks. It is stated that the co-accused Mohsin and the Applicant/Yasin also tried to burn the clothes of deceased.



2.4 It is stated that at the instance of co-accused Mohsin, one piece of base bat which was used by him in the incident was recovered. Further, the other co-accused persons namely Deepak and Anil were arrested on the same day i.e. 23.08.2017. It is stated that search for the Applicant as well was done at that point of time, however, he was not traceable.

2.5 It is stated that during the course of investigation, the deceased was identified by his mother and brother as Anup alias Ganju s/o Ramnath, on the basis of the photographs.

2.6 It is stated that the statements under Sections 161 and 164 of the Cr.P.C. of one last seen witness namely Vishal was taken wherein he as well confirmed that in his autorickshaw the Applicant/Yasin, Deepak and Anil had brought along Ganju (the victim) from St. Stephen Hospital to the way of Shiv Kund (spot), near Hindu Rao Hospital and the co-accused Mohsin was also following the auto rickshaw of Vishal on his scooter.

2.7 It is stated that on 28.08.2017, the Applicant was arrested in this case and at his instance, the knife used by him in the offence to commit murder of the deceased Ganju was recovered. Further as per the FSL result the blood detected on the knife, which was recovered at the instance of Applicant matched with the blood sample of the deceased Ganju.

2.8 It is stated that the case arising out of the present FIR is pending for trial and charges have been framed by the Trial Court vide order dated 04.09.2018. The next date of hearing before the Trial Court is 17.02.2025; and the matter is presently at the stage of examination of witness wherein 17 out of total 34 witnesses have been examined so far.

2.9 The 2nd status report dated 10.01.2025 enlists details of the nine (9) previous FIRs filed against the Applicant herein and in fact it records that



the Applicant has been convicted in seven (7) of the said FIRs. It is stated that, thus, the record clearly shows that the Applicant is a habitual offender who has a propensity for committing crimes.

Arguments of the Applicant/accused

3. Learned counsel for the Applicant states that the Applicant herein was arrested on 28.08.2017 and since then he has been lodged in jail. He states that as per the record as on 30.01.2025 the Applicant has been in custody for over a period of 7 years 4 months 19 days.

3.1. He states that the crucial public witnesses already stand examined and no witness has been examined since more than one and a half years. He states the last witness [i.e. PW-17 Retired Inspector Manohar Lal] was examined and discharge on 15.05.2023 and since the trial as well is likely to take a considerable amount of time; therefore, no useful purpose would be served for keeping the Applicant in judicial custody.

3.2. He states that police officials have investigated the matter only on the basis of two eyewitnesses namely Mohd. Abid and Vishal, however, nothing on record has come to suggest that there was an enmity between the deceased and the Applicant. He states that infact the said witnesses have also turned hostile and not supported the case of the prosecution.

3.3. He states that the gravity of the offence cannot be the sole basis for denial of bail.

3.4. He further states that there were various lapses and infirmities in the investigation since the police officials failed to procure Call Detail Records (CDR's); CCTV footage of the St. Stephen's Hospital or nearby area, therefore, it establishes that the police officials have no evidence to support the presence of the Applicant at the place of crime.



3.5. He states that the Applicant is entitled to the benefit of bail on the basis of parity since the two co-accused namely Deepak on 04.02.2020¹ and Anil on 19.05.2020² have been granted bail by this Court.

Arguments of the Respondent-State

4. In reply, Mr. Khanna, learned APP opposes the bail application of the Applicant. He states that the present case is a case involving commission of an offence of murder and the allegations levelled in the FIR against the Applicant are very serious and grave in nature.

4.1. He states that in case bail is granted to the Applicant, there are chances that the prosecution's witnesses which are yet to be recorded would be exposed to threat, coercion and/or undue influence. Further there is a reasonable likelihood that the applicant may abscond or flee and evade the process of law.

4.2. He states that the Applicant has been classified as a bad character of P.S Subji Mandia and further involvement of the Applicant in nine (9) criminal cases are not disputed and are indicative of the fact that the Applicant is a habitual offender.

4.3. He states that previously as well five bail applications of the Applicant filed before the Trial Court has already been dismissed vide orders dated 09.11.2020, 02.08.2021, 18.11.2023, 19.12.2023 and 04.02.2024 respectively, and by this Court as well vide order dated 19.05.2020 in BAIL APPLN. 860 of 2020. He further states besides that there has been no change in circumstances as well which could evidence that Applicant is not involved in commission of such grave offence.

¹ BAIL APPLN. 3135 of 2019

² BAIL APPLN. 861 of 2020



Analysis and conclusion

5. This Court has heard the submission of the parties.

6. Before advertng to the facts of the present case it would be imperative to refer to the order passed by the Supreme Court on 27.11.2024 in Special Leave Petition (Criminal) No. 13378 of 2024 titled as '**X v. State of Rajasthan**'³ wherein the Supreme Court made observations vis-à-vis for grant of bail in cases involving serious offenses. The relevant portion of the said order reads 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."

(‘Emphasis Supplied’)

³ 2024 SCC OnLine SC 3539



7. In the facts of the present case as per the prosecution the Applicant is allegedly the main perpetrator of the crime. The Applicant allegedly had a fight with the deceased and to avenge the said fight he hatched the conspiracy with the co-accused Mohsin, Deepak and Anil. And on the date of the incident as per the last seen evidence the four (4) accused accompanied the deceased to the scene of crime. The alleged knife used in the attack has been recovered from the Applicant herein. These allegations show that the prosecution has alleged that the murder was pre-mediated at the instance of the Applicant herein.

8. The prosecution has filed with its 2nd status report details of nine (9) other cases which have been registered against the Applicant between 1998 and 2017. Significantly, in FIR No. 270/2005, when the Applicant was convicted for the first time in 2009, the Trial Court gave him the benefit of being a first time offender and let him out on probation. However, despite being on probation, the Applicant was booked in five (5) FIRs between 2010 and 2015, which included an FIR for robbery. Thereafter, in the year, 2015 when the Applicant was convicted in FIR No. 165/2014, his sentence was suspended by the Appellate Court on 10.07.2015, which order is still in subsistence. While the Applicant was on bail due to the suspension of sentence, the subject FIR of this case has been registered against the Applicant on 07.08.2017. The Petitioner has also been classified as a bad character of the P.S Subji Mandi.

9. The Nominal Roll of the Applicant as on 30.01.2025 has been placed on record, which shows that the overall conduct of the Applicant in the Jail as well as his conduct in the past one year have been unsatisfactory. The



punishments handed down to the Applicant include sexual harassment of other inmates and beating them.

10. In these facts, it is apparent that the Applicant's character has the propensity of repeating the offence and leniency shown by Court while granting him probation and suspension of sentence in the FIRs where he was convicted has not had any sobering influence on him.

11. The witness Vishal (PW-2), who last saw the Applicant with the victim had his statement recorded under Section 164 Cr.P.C. The witness Mohd. Abid (PW-7) who heard the Applicant and the other co-accused discuss the killing of the deceased also had his statement recorded under Section 164 Cr.P.C. It has been contended that, however, the said two material witnesses PW-2 and PW-7 have since turned hostile. In these facts, the apprehension of the prosecution that the Applicant if released on bail will threaten the witnesses appears to be plausible.

12. The alleged role of the Applicant is graver than the role of the other co-accused persons, Deepak and Anil who have been enlarged on bail. Hence the Applicant cannot seek the bail on the ground of parity.

13. The charges already stand framed and 17 out of 34 witnesses have been examined. The trial has, thus, progressed and the next date of hearing is 17.02.2025.

14. In these facts looking at the heinous nature of the offence, stage of the Trial and the character and behaviour of the Applicant, no grounds for grant of regular bail is made out at this stage.

15. Accordingly, the present bail application stands rejected.

16. Pending applications, if any, stands disposed of as infructuous.



17. It is clarified that the observations made in the present judgment/order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial. The said observations should not be taken as an expression of opinion on the merits of the case.

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 4, 2025/hp/ms
Click here to check corrigendum, if any