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

+ **BAIL APPLN. 4081/2024**

DINESH KUMAR ALIAS RAVINDERPetitioner

Through: Ms. Sakshi Sachdeva, Mr. Gajraj Singh, Ms. Aayushi Gupta and Ms. Ritika Rajput, Advocates.

versus

THE STATE GOVT OF NCT OF DELHIRespondent

Through: Ms. Manjeet Arya, APP for the State. Insp. Mahendra Kumar, P.S.: Shahbad Dairy alongwith the brother of the deceased, Ajay Kumar. Mr. Sumeet Shokeen, Advocate for the next-of-kin of the deceased.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

22.01.2025

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By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner seeks regular bail in case FIR No. 0493/2019 dated 09.11.2019 registered under sections 302/34 of the Indian Penal Code, 1860 ('IPC') at P.S.: Shahbad Dairy, Delhi ('subject FIR').

2. Notice on this petition was issued on 11.11.2024; pursuant to which Status Report dated 19.12.2024 has been filed on behalf of the State.
3. Nominal Roll dated 02.01.2025 has also been received from the concerned Jail Superintendent.
4. The court has heard Ms. Sakshi Sachdeva, learned counsel appearing on behalf of the petitioner and Ms. Manjeet Arya, learned APP



appearing for the State. Pursuant to intimation sent *vide* order dated 11.11.2024, Mr. Sumeet Shokeen, learned counsel is present on behalf of the next-of-kin of the deceased and has also been heard.

5. Ms. Sachdeva submits, that the case relates to an incident of the night of 06/07.11.2019, when the petitioner is alleged to have beaten one Lokesh, who was his neighbour, to death. It is submitted, that as narrated in the subject FIR, the FIR was registered at the instance of the father of the deceased - Om Prakash - who has also since passed away.
6. Learned counsel for the petitioner submits, that though initially there were 05 accused persons in the subject FIR, upon completion of investigation only 01 of them *i.e.*, the present petitioner – Dinesh - has been sent-up for trial; and all other accused persons have been placed in Column No.12 in the chargesheet filed in the case.
7. Ms. Sachdeva informs the court, that though a protest petition was filed by the complainant challenging the 04 co-accused persons being placed in Column No.12, that petition has been dismissed by the learned trial court; and as of now only the petitioner is facing trial in the matter.
8. Learned counsel argues, that the only ‘evidence’ cited against the petitioner is that he was allegedly ‘last seen’ with the deceased; which allegation was sought to be supported by statements of one Vinit, and his (Vinit’s) father, one Mahender. Ms. Sachdeva clarifies that the statement of Vinit was recorded under section 164 of the Code of Criminal Procedure 1973 (‘Cr.P.C.’) and that of Mahender was recorded under section 161 Cr.P.C.



9. Ms. Sachdeva argues however, that in fact it was the petitioner Dinesh who made the PCR call pursuant to which the police reached the spot where the incident had allegedly occurred.
10. Learned counsel has drawn attention to the court deposition of PW-1 Vinit recorded on 23.09.2024, to show that the said witness has turned hostile and has said that when he heard noises outside his house, he went outside and saw a person breaking the windows of a car belonging to the petitioner with stones, whereupon he went and informed the petitioner. Thereafter, PW-1 narrates, that when he returned to his house, his father PW-2 (Mahender) came out onto the balcony and told him that he had seen a boy running towards the pond; whereafter, the petitioner and PW-1 went towards the pond in search of that person. PW-1 then goes on to say, that the petitioner informed him that when he reached the spot, he saw Lokesh (deceased) lying on the bricks/brick floor; and thereafter the petitioner - Dinesh - made the PCR call. A copy of PW-1's court deposition recorded on 23.09.2024 has been filed in these proceedings. Most importantly, it is pointed-out that PW-1 has said in his court deposition that he had not seen as to who had given beatings to the deceased.
11. The record shows that the victim Lokesh passed away the next morning in hospital.
12. Ms. Sachdeva further submits, that the other prosecution witness, PW-2 Mahender, who is alleged to have seen a person running away after smashing the windows of the car of the petitioner, has also turned hostile in his deposition recorded on 20.12.2024 before the



learned trial court; and has only said that he had noticed a person running towards the pond, which is what he informed his son PW-1 as well as the petitioner. A copy of PW-2's court deposition recorded on 20.12.2024 has been handed-up during the course of arguments.

13. Learned counsel points-out, that the post-mortem reports records 34 injuries on the deceased and opines that death was “... *a result of hemorrhagic shock due to laceration of mesentery following blunt force trauma to the abdomen, which is sufficient to cause death in ordinary course of nature.*” Ms. Sachdeva submits however, that no weapon of offence has been recovered from the petitioner; and there is no material on record to connect the petitioner with the assault which resulted in 34 injuries on the deceased.
14. It is submitted, that apart from the so-called ‘last seen’ evidence, which has been belied by the 02 material prosecution witnesses having turned hostile in their court depositions, the prosecution is also citing against the petitioner a certain CCTV footage of a camera installed at a construction site in the area. In this behalf, Ms. Sachdeva submits, that as narrated in the chargesheet, the prosecution admits that the CCTV camera installed near the construction site was out of focus, and therefore, no video-footage was recovered from it, except they allege that the audio-recording in the footage is the voice of the petitioner Dinesh, where he is heard beating and shouting at the deceased.
15. Learned counsel argues however, that no voice matching has been done; and therefore there is no basis to allege that the voice heard in the audio-recording, without any visual, is that of the petitioner.



16. Ms. Sachdeva submits, that only 02 out of 36 prosecution witnesses cited have been examined so far; and though there are 08 other public witnesses who are yet to depose, those witnesses cannot possibly depose anything about the actual incident since they are neither eye-witnesses to the incident, nor are they concerned with 'last seen' evidence cited against the petitioner.
17. In this backdrop, Ms. Sachdeva points-out that the petitioner has spent about 05 years in judicial custody as an undertrial, out of which he was released for about 02 years or so during the then prevailing COVID pandemic based on HPC guidelines. Learned counsel submits, that the petitioner has no other criminal involvements; his jail conduct has been 'satisfactory'; and that even during his release on interim bail on 03 occasions as recorded in the nominal roll, there is no allegation that he misused that liberty.
18. On the other hand, opposing the grant of bail, learned APP submits, that the genesis of the incident is that the deceased had smashed the windows of the petitioner's car; and it is only the petitioner who had 'motive' to assault the deceased.
19. Ms. Arya submits, that in their statements recorded under section 164 and section 161 Cr.P.C. respectively, PW-1 and PW-2 had given a completely different version of the incident; and though they have turned hostile in their court deposition, it is for the learned trial court to finally take a view on whether to believe the statement made during the court deposition or the statements recorded earlier.
20. Learned APP argues, that in the CCTV footage of the construction site cited by them, the prosecution hopes to succeed in showing that



though the visuals are not clear, the petitioner can yet be identified by his voice.

21. Mr. Shokeen, learned counsel for the complainant adopts the submissions made on behalf of the State; and adds that there are other public witnesses cited in the charge-sheet, who would depose that they had dropped Lokesh (deceased) at his house on the fateful night and would also support the prosecution theory that the deceased was 'last seen' with the petitioner.
22. Learned counsel submits, that this is a case of a botched-up investigation and an application seeking further investigation has been filed by the complainant, which is pending before the learned trial court.
23. Furthermore, attempting to rebut the petitioner's contention, Mr. Shokeen submits, that the petitioner had made the PCR call only to mislead the investigating agency.
24. Upon an overall consideration of the circumstances obtaining in the matter, what weighs with the court, at this stage are the following considerations :
 - 24.1. The main evidence cited by the prosecution is that the petitioner was 'last seen' with the deceased, in support of which they have produced PW-1 as the eye-witness and PW-2 as an additional witness, both the witnesses being neighbours of the petitioner as well as the deceased. However, a perusal of the court deposition of PW-1 and PW-2 would show that both have turned hostile, inasmuch as PW-1 has expressly said that he did not see the petitioner beating the deceased, but that he had only



seen the deceased smashing the windows of the petitioner's car. PW-2 has only deposed that he had seen a person fleeing towards the pond, whereafter the petitioner and PW-2's son (*i.e.* PW-1) followed that person on the road towards the pond;

24.2. As per the post-mortem report, the cause of death is *hemorrhagic shock due to laceration of mesentery following blunt force trauma to the abdomen*, and 34 injuries have been found on the body of the deceased; but no weapon of offence has been recovered nor is there any evidence to connect the petitioner with the injuries found on the deceased;

24.3. Even the CCTV footage from the construction site which is being cited against the petitioner, at best only contains an audio-recording in which the prosecution says the petitioner is heard shouting at the deceased. However, no voice matching has been done to establish that the voice heard in the audio recording is that of the petitioner; and there is no video-footage available since the CCTV camera was admittedly out of focus.

24.4. The nominal roll shows that the petitioner has spent more than 03 years in judicial custody as an undertrial, not counting the period for which he was released on interim bail during the then prevailing pandemic under HPC guidelines; he is shown as having been released on interim bail on 03 earlier occasions and there is no allegation that he misused the interim bail so granted; his overall jail conduct is recorded as 'satisfactory; and he has no other criminal involvements; and



- 24.5. Most importantly, only 02 of the 36 witnesses cited by the prosecution have so far been examined and it is obvious that trial in the matter will take a long time to conclude.
25. In the circumstances, this court is persuaded to admit the petitioner – ***Dinesh Kumar @ Ravinder s/o Baljeet Singh*** – to *regular bail* pending trial, subject to the following conditions :
- 25.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 25.2. The petitioner shall furnish to the Investigating Officer ('I.O.') a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 25.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 25.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 25.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.



26. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
27. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
28. A copy of this order be sent to the concerned Jail Superintendent *forthwith*, for information and compliance.
29. The petition stands disposed-of.
30. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 22, 2025

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