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

+ **BAIL APPLN. 4488/2024 & CRL.M.A. 36746/2024, CRL.M.A. 36747/2024**

VIRENDRA KUMAR

..... Applicant

Through: Mr. M. L. Yadav, Mr. Harish Chand,
Ms. Mamta Rani Jha, Mr. Prashant,
Mr. Anant Chittoriya, Mr. Deepak
Ahlawat, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Mukesh Kumar, APP with SI
Sudhir Rathi, PS: Burari.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

20.01.2025

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1. The present application under Section 483 of Bharatiya Nagarik Suraksha Sanhita 2023¹ read with Section 239 of the Code of Criminal Procedure, 1973², seeks grant of regular bail in case FIR no. 0918/2021 under Sections 302, 120B and 34 of the Indian Penal Code, 1870³, registered at P.S. Burari.

2. In a nutshell, the case of the prosecution is as follows:

2.1. On 08th November, 2021, the Complainant in the present case – Constable Bhim Singh was patrolling in the Haza area and during the patrol, at about 7 PM, he saw a man in a distraught and intoxicated state. On

¹ “BNSS”

² “Cr.P.C.”



inquiry, the said person told his name as Rakesh ('co-accused Rakesh') and disclosed to the Complainant, Constable Bhim Singh that he had murdered his Bhabhi (sister-in-law) (mouth spoken), named Pinky. Upon being informed about the same, the Complainant took co-accused Rakesh to the P.S. Burari and informed the Duty Officer about the disclosure made by co-accused Rakesh. Thereafter, the Duty Officer deputed the Complainant, SI Deepak and C. Rishi to go to the spot along with the co-accused Rakesh for necessary action. When the police, along with the co-accused arrived at the address told by the co-accused Rakesh – i.e., House no. 24, Gali no. 16, A-2 Block, West Sant Nagar, Burari, they discovered that the door to the flat on the fourth floor was open. Upon entering the house, the Complainant saw an old man sitting on sofa namely one Ram Tavankal and when Complainant entered the room on the right side, he saw a lady lying unconscious in the room. Upon checking she was found to be dead. The co-accused told the Complainant that the dead body is of his sister-in-law Pinky, whom he had killed. Thereafter, the police arrested the co-accused Rakesh.

2.2 During the interrogation of the co-accused Rakesh, he disclosed that he belongs to Uttar Pradesh and learnt to drive cars at a young age. He stated that in the year 2018, he met the present Applicant – i.e., Virendra Kumar, who is a professor in Delhi University. After sometime, the Applicant and co-accused Rakesh became friends and Rakesh started working as a driver for the Applicant, on a monthly salary of INR 18,000/-. Moreover, the co-accused was also provided a room on the terrace of the house of the Applicant, where he lived with his family. It was also found that another co-accused Govind – i.e., the nephew of the Applicant lived on the terrace of

³ "IPC"



house of the Applicant. The said co-accused Govind was arrested by the police on 9th November, 2021.

2.3 Further, co-accused Rakesh stated that the Applicant, Virendra Kumar got married the deceased Pinky on 16th February, 2021 and after their marriage, the deceased Pinky forced the Applicant to ask the co-accused persons Rakesh and Govind to leave the house and live separately. He stated that due to this, there was frequent arguments and fights in the household. Further, Pinky had told the co-accused persons Rakesh and Govind to leave the Applicant's house and subsequently force them out of the house. Co-accused Rakesh was also terminated from his service as an employee and he disclosed that he had asked the Applicant herein to pay his pending salary amounting to INR 2-2.5 Lakhs. However, the deceased Pinky refused to pay the pending arrears of the co-accused Rakesh, as she handled all the financial transactions and accounts of the house.

2.4 During interrogation, co-accused Rakesh further disclosed that he after being ousted from the house of the Applicant, he started living in a rented accommodation, two blocks away from the Applicant's house. Rakesh revealed that due to financial constraints on his family, his wife repeatedly asked him to get his pending dues and even had a fight with the deceased Pinky over the said pending dues, about 8-10 days prior to the incident.

2.5 The co-accused Rakesh disclosed that prior to Applicant's marriage with Pinky, the Applicant and co-accused Rakesh were on good relations, however, after their marriage, the relationship between the two became sour. Moreover, it was disclosed that the deceased Pinky always had a doubt on her husband, i.e., the Applicant for being involved in an extra-marital affair



with the wife of co-accused, Rakesh.

2.6 During the interrogation of the Applicant, even he revealed that the deceased, his wife Pinky was domineering and would not take care of his parents. Further, he stated that she was frequently found to be in conversations with someone on the phone, but would refuse to reveal the identity of the person with whom she was talking to.

2.7 In light of the above facts, it has been found that a conspiracy was hatched by the three accused persons, the Applicant – Virendra, Rakesh and Govind to kill Pinky, the deceased wife of Applicant, since they were all frustrated with her. All three accused persons had motive as Rakesh was rendered unemployed due to the deceased and had pending salary of INR 2-2.5 Lakhs which was not being paid by her, the other co-accused Govind was rendered homeless and had to start living in the factory where he was working, whereas the Applicant was frustrated with his wife for not revealing the identity of the person with whom she was allegedly having an affair. Further, she did not take care of the Applicant's parents and routinely misbehaved with him.

2.8. Pertinently, during the course of investigation, it was also found that 2 days prior to the date of incident, the deceased Pinky made a PCR call around 12 AM on 6th November, 2021, stating that there was a plan being concocted by her husband and his driver – co-accused Rakesh, to kill her. A similar call was also received by the police from the deceased's mother.

2.9 The Applicant was arrested on 09th November, 2021 and since then, he has been in judicial custody. After conclusion of the investigation, the chargesheet and supplementary chargesheet stands filed and charges have also been framed against the accused persons. Presently, the trial is at the



stage of prosecution evidence, wherein, 8 witnesses have been examined, out of a total of 46 witnesses, including the mother of the deceased Pinky.

3. In the above background, counsel for Applicant submits that the case of the prosecution is primarily based only on alleged circumstantial evidence. There is indeed no eye witness to the alleged incident. Even at the highest, the only evidence against the Applicant is the disclosure statement of co-accused, Rakesh, who has himself admitted to having committed the murder. The allegations against the Applicant is solely based on an alleged theory of conspiracy, which has no corroborative evidence to stand on. He points out that at the time of the incident the Applicant had taken his ailing mother to the hospital and therefore, he was nowhere near the scene of the crime. Further, the CDR and CCTV footage sought to be relied upon by the prosecution is also circumstantial at best and nothing has been recovered from the Applicant. Lastly, he submits that in the present case, the public witnesses have been examined and therefore, there is no apprehension of the Applicant influencing the witnesses. Thus, counsel for the Applicant argues that since the entire case of the prosecution against the Applicant is circumstantial, and since there are no criminal antecedents and he has been in jail for a period of 3 years, he should be granted bail by this Court.

4. On the other hand, Mr. Mukesh Kumar, APP for the State, strongly opposes the present application. He places reliance on Section 106 of the India Evidence Act, 1872⁴ and submits that since the deceased was found at the house of Applicant, it is incumbent upon him to discharge the onus and explain the circumstances under which the death took place. He further submits that there is sufficient evidence to establish the conspiracy. CCTV



as well as the CDR serve as cogent pieces of evidence and they both suggest that Applicant was present at his house – the scene of the crime, at the time of the incident. Moreover, he urges that both the mother of the deceased as well as the deceased herself had strong apprehensions before the incident that the Applicant, along with the co-accused Rakesh, would hatch a conspiracy to kill the Applicant, which apprehensions came true.

5. The Court has considered the contentions of the parties. As of now, the Trial is underway and 8, out of a total of 46 witnesses have been examined so far. Indeed, the Applicant is being prosecuted for a heinous offence under Section 302 of IPC, however, at the same time, the Court takes note of the fact that the allegations against Applicant are based on conspiracy with the co-accused. The basis of allegations of conspiracy arises from the disclosures made by the co-accused Rakesh during investigation. Thus, the evidence against the Applicant, on a *prima facie* opinion of this Court, is circumstantial. There is no direct evidence. As regards the contention of the prosecution that the Applicant has to discharge his burden under Section 106 of Evidence Act is an aspect that shall be determined at trial, on the basis of evidence. Similarly, the aspect of the deceased and her mother being apprehensive of the Applicant, also is an aspect which has to be examined during trial. At this stage, this Court is not required to conduct a detailed analysis of the evidence and assess these contentions, or give any opinions on the merits of the case.

6. It is well established through catena of judgments by the Supreme Court that the object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of

⁴ “Evidence Act”



the accused person at the trial⁵.

7. Furthermore, considering the fact that the Applicant has been in judicial custody for 3 years and the trial is only at the stage of prosecution evidence, this Court is inclined to grant regular bail to the present Applicant.

8. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The Applicant shall also not come in contact with the family of the deceased in any manner whatsoever.
- c. The Applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
- d. The Applicant shall appear before the learned Trial Court as and when directed;
- e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
- g. The Applicant shall appear before the concerned IO at the concerned Police Station, on the first and third Friday of every month.

⁵ See also: *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.



9. In the event of there being any FIR/DD entry/complaint lodged against the Applicant; it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
10. It is clarified that any observations made in the present order are 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.
11. The bail application is allowed in the afore-mentioned terms.
12. Disposed of, along with pending applications.

SANJEEV NARULA, J

JANUARY 20, 2025

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