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

+ **BAIL APPLN. 4694/2024**

SAURABH TYAGI

.....Petitioner

Through: Mr. Rajiv Kumar, Advocate

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for the State

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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22.01.2025

1. The present bail application has been filed seeking regular bail in FIR No. 63/2023 dated 13.06.2021 registered at P.S. Naraina, Delhi under Section 302 IPC¹. The Applicant was arrested on 01.04.2023. The charge-sheet has been filed on 28.06.2023 under Sections 302/212/120B/34 IPC and Section 25/27 of the Arms Act, 1959.

2. The case of the prosecution is that on 30.03.2023, the police received a PCR call regarding shifting of an injured person, namely, Kamal Kumar ('deceased') in DDU Hospital, Hari Nagar, Delhi, who was later declared brought dead by the hospital. It is stated that as no eye-witness was found, therefore, post-mortem of the deceased was conducted and during the post-mortem a bullet was found in the skull of the deceased.

3. It is stated that based upon the apprehension of the son and the brother of the deceased, one Renu Devi (main accused) was arrested on 01.04.2023. The accused Renu Devi further disclosed that Kamal Kumar was killed by

¹ Indian Penal Code, 1860



Sachin, who acted in conspiracy with Rohit and Sumit Kumar. She further disclosed that Kamal Kumar was shot in the head by Sachin with a country made pistol. She stated that she had planned to kill the deceased with Bharat alias Mitthu, Sachin, Sumit and Rohit. She stated that the co-accused told her that they would also involve the Applicant/Saurabh Tyagi to bring his car on the day of the crime so that the accused persons can escape in the said car. She stated that Bharat, Sachin, Sumit and Rohit were scheduled to visit her on 01.04.2023 for collecting the money.

4. In view of the disclosure made by main accused Renu Devi, the co-accused persons - Bharat Kumar alias Mitthu, Sachin, Rohit, Sumit Kumar and Saurabh Tyagi i.e., the Applicant herein were arrested on 01.04.2023.

5. Learned counsel for the Applicant states that the Applicant/accused is innocent and has been falsely made accused in this case.

5.1 He states that the alleged main accused/conspirator Renu Devi never uttered the name of the Applicant in the context of planning of murder of Kamal Thakur and further no other accused has uttered the name of the Applicant in the context of murder of Kamal Thakur.

5.2 He states that neither the murder weapon nor any money alleged to have been paid by Renu Devi, has been recovered from the Applicant at the time of the Applicant's arrest. The murder weapon has been recovered from co-accused Sachin. The Applicant had no knowledge or information about the alleged crime and has been falsely implicated in the case.

5.3 He states that the charges have already been framed in the present case and there are 42 witnesses to be examined. Thus, the chances of early completion of trial of the present case is at bleak.



5.4 He states that investigation of the present case has been completed and the charge-sheet has already been filed on 28.06.2023. Therefore, no useful purpose will be served by keeping the Applicant behind the bars.

5.5 He states that the allegations against the Petitioner in the charge-sheet are that the Applicant allegedly assisted accused Sumit, Bharat and Rohit to escape from Delhi after the offence had been committed to hide them for which a charge has been framed under Section 212 of IPC against the Applicant.

5.6 He states that the Applicant has clean antecedents and the applicant is in custody from 31.03.2023, i.e. about One and a Half year.

6. Learned APP has opposed the regular bail application of the Applicant/accused. He states that the Applicant has played an active role in the conspiracy of murder, as the CDR of the Applicant's mobile phone shows that the co-accused Sachin was in regular touch with the Applicant, before and after the murder was committed.

6.1. He states that the Applicant was not only a part of the conspiracy to commit murder of the deceased but has also played an important role in assisting the accused in fleeing the other accused persons from the crime spot, as the Applicant in a planned manner after commission of the murder, took away the accused persons in his I-20 car to Himachal Pradesh.

6.2. He states that the Applicant was close associate of co-accused Sumit as the mobile SIM card no. 9310412146, which was being used by the Applicant was issued on ID of co-accused Sumit.

6.3. He states that after completion of the investigation in the present case, charge-sheet against the accused persons have been filed in the concerned Court on 28.06.2023 and charges have been framed on 21.11.2024.



6.4. He states that all the accused persons are in Judicial Custody and the above case is pending trial for prosecution evidence.

7. This Court has considered the submission of the parties.

8. A perusal of the charge-sheet shows that the main accused Renu Devi, who allegedly hatched the conspiracy to murder the deceased and hired the co-accused persons Bharat, Sachin, Rohit and Sumit Kumar for the murder of the deceased, had no interaction with the Applicant/Saurabh Tyagi. In fact, Renu Devi had never met the Applicant and did not hire him for the murder. Even as per the disclosure of statement of the main accused Renu Devi and co-accused Sachin and Sumit Kumar, the Applicant/Saurabh Tyagi was not present at the crime scene and did not participate in the commission of the offence of murder. As per the charge-sheet the murder was committed by co-accused Sachin with the active assistance of co-accused Sumit as these two persons were riding the Scooty on which they approached the deceased for the attack.

9. The allegation against the Applicant/Saurabh Tyagi is that he helped the accused persons Sumit, Sachin, Bharat and Rohit to escape from Delhi after the commission of the offence. Even, as per the charge-sheet the Applicant/Saurabh Tyagi and accused Bharat were not present at the crime scene when the murder took place.

10. Thus, as per the charge-sheet, prima facie, there is no evidence that the Applicant conspired with the main accused Renu Devi for the commission of the murder of the deceased. There is prima facie no cogent evidence on the record indicating that Applicant participated in the conspiracy of the murder of the deceased or that he was aware of the conspiracy hatched by the main accused Renu Devi with the co-accused



Sachin, Sumit, Rohit and Bharat. The factum of common intention, if any, of all the accused including the Applicant herein would be examined at the final stage after evidence stands recorded.

11. The Supreme Court in the case of **Sanjay Chandra v. CBI**², observed as follows: -

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a

² (2012) 1 SCC 40



lesson.”

12. Nominal Roll indicates that Applicant has no previous involvement in committing any crime and has no other cases pending against him. Investigation has been completed, charge-sheet stands filed and charges have already been framed.

13. There are 42 witnesses to be examined and there is no witness which the Petitioner is likely to influence. Looking at the number of witnesses to be examined, the trial in the present case is likely to take some time. In the absence of criminal antecedents and the fact that the Applicant is in the custody for 1 year and 9 months, it would not be prudent to keep the Applicant/co-accused-Saurabh Tyagi behind bars for an indefinite period. In light of the above facts, this Court finds it to be a fit case for grant of bail to the Applicant.

14. Thus, considering the overall facts, this Court is of the opinion that the Applicant/accused Saurabh Tyagi ought to be enlarged on bail. The Applicant is, therefore, admitted to regular bail in FIR No.63/2023 dated 13.06.2021, registered with P.S. Naraina, Delhi for offences under 302/212/120B/34 of 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 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 Investigation Officer (I.O.). Additionally, the Applicant shall intimate the said Court and to



the I.O. 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 join investigation as and when called by the I.O. concerned.

(v) Applicant shall provide all mobile numbers to the I.O. concerned, which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the I.O. concerned.

(vi) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses.

(vii) The Applicant will not tamper with the evidence of the case.

(viii) The Applicant will physically mark his presence before the concerned I.O. at P.S. Naraina, Delhi once in four (4) weeks. The Applicant will mark presence on the 01st Tuesday of every month at 02:00 PM; and the concerned I.O. is directed to release him by 02:30 PM after recording his presence and completion of all formalities.

15. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

16. 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.



17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

18. Accordingly, this bail application is disposed of. Pending applications (if any) are disposed of as infructuous.

19. 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 22, 2025/mt/MG

Click here to check corrigendum, if any