



2024:DHC:7765



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 07.10.2024

+ **BAIL APPLN. 1519/2024**

BHUPENDER @ ROHIT

.....Applicant

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Sarthak Tomar, Adv.

For the Respondent : Mr. Ajay Vikram Singh, APP for
the State.
SI Mahendra Patel, PS Narela.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed seeking regular bail in FIR No. 163/2019 dated 28.04.2019, for offences under sections 365/34 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Narela, Outer North. The chargesheet was filed under sections 364/302/201/34 of the IPC.

2. Briefly stated, the case of the Prosecution is that the deceased while assisting his mother/complainant in purchase of groceries



from a nearby market was allegedly abducted by the applicant/accused along with co-accused persons, who arrived at the place of occurrence in a car and forcefully dragged the deceased into the car and ran away which led to the registration of the present FIR No. 163/2019 at the instance of the mother of the deceased/complainant.

3. Further, during investigation the body of the deceased was recovered within the jurisdiction of PS Rai, Sonipat, Haryana. Consequently, Section 302 of the IPC was added to the FIR, which initially was registered for offences under Section 365/34 IPC for kidnapping.

4. It is contended on behalf of the applicant that the applicant is in custody for the last 5 years in as much as the applicant has been incarcerated since 01.05.2019. It is submitted on behalf of the applicant that the case of the prosecution profoundly relies upon the testimonies of the complainant and father of the deceased which are highly contradictory in nature as against their deposition during the trial.

5. It is further submitted on behalf of the applicant that the applicant lacks any motive or enmity against the deceased and therefore has been falsely implicated in this case by the prosecution upon the disclosure of the co-accused – Mohit.

6. He submitted that the applicant came from a poor economic background and has a dependent family, including his widow



mother, wife, and a child of about 7-8 months. His prolonged detention had severely impacted his family's survival.

7. He submitted that no CCTV footage or independent witnesses supported the prosecution's case. Despite the incident allegedly occurring in broad daylight, no independent witnesses had come forward to corroborate the prosecution's narrative.

8. He stated that the applicant's name was not mentioned in the initial FIR, despite him being known to the family of the deceased, further suggesting that his implication in the case was an afterthought.

9. He submitted that the investigation has been completed, and the chargesheet had already been filed. The applicant submitted that there was no need to keep him in custody any longer, as he was no longer required for investigative purposes.

10. On the other hand, the learned Additional Public Prosecutor for the state submits that the allegations against the applicant are grave and serious and the defences taken by the applicant are a matter of trial and cannot be looked into at the time of deciding whether the applicant is entitled to be released on bail. He submits that the applicant is actively involved in the heinous offence of murdering the deceased

11. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; the nature and



gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

12. However, prolonged incarceration as an undertrial militates against the right to life and personal liberty guaranteed under Article 21 of the Constitution, and is also a factor which has to be kept in mind at the time of deciding the question of grant or refusal of bail.

13. It is alleged that the mother of the deceased knew the applicant, as he was allegedly their neighbour. It is contended that in such circumstances, there is no plausible explanation provided by the prosecution for her failure to name the applicant in the initial complaint, especially given their familiarity. This raises significant doubts about the veracity of her statements implicating the applicant at a later stage. It is also noted that the applicant's arrest was primarily based on the disclosure made by the co-accused, Mohit, who was identified by the mother of the deceased. No independent or public witnesses were produced to support the prosecution's claims, despite the alleged incident taking place in a public area. All material witnesses, including the parents of the deceased, have already been examined, and their testimonies have exhibited inconsistencies. The father of the deceased initially did not name the applicant in his statement under Section 161 CrPC, nor did he name him during his testimony on 11.11.2022. It was only during a subsequent statement on 21.09.2023, that the father named the



applicant. This delay and change in the father's testimony at this stage creates doubt on the credibility of the allegations against the applicant. The contradictions in the statements would be tested during the trial, however, benefit of the same cannot be denied at the time of considering application for bail.

14. It is also relevant to note that the applicant is in custody since 28.04.2019 and the trial has not proceeded much. It is pointed out that the material witnesses have been examined. The applicant has suffered incarceration for a significant period of time.

15. The applicant is also stated to be of clean antecedents. Keeping him in further incarceration would only result in the denial of his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in near future.

16. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeer*** : AIR 2021 SC 712 held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

17. While it cannot be denied that the offence alleged against the applicant is heinous in nature, the Hon'ble Apex Court in the case of ***Javed Gulam Nabi Shaikh v. State of Maharashtra and Another***: CrI.A.2787/2024 has observed as under:

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

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

18. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

19. In view of the above, without commenting further on the merits of the case, I am of the opinion that the applicant has made out a prima facie case for bail.

20. Considering the aforesaid, the applicant is directed to be released on bail in the present FIR on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, out of which, one of the sureties necessarily has to be the family member of the applicant, 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 appear before the learned Trial Court as and when directed;
 - c. The applicant shall not leave the boundaries of the country without the permission of the learned Trial Court;
 - d. 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;
 - e. 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.
21. 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.
22. 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.
23. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 7, 2024