



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

Date of decision: 23rd JULY, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 1007/2024**

GULKESH KUMAR

.....Petitioner

Through: Mr. Jaiveer, Mr. Irshad, Advs.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP
Inspector Parveen Kumar, PS Moti
Nagar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking bail in FIR No.273/2019 dated 25.06.2019, registered at Police Station Moti Nagar for offences under Sections 302/201 IPC.
2. The facts, as stated by the prosecution, are that on 24.06.2019 information was received at Police Station Moti Nagar that somebody has killed the brother-in-law of the caller. It is stated that the said information was entered into diary vide DD No.82A and the same was entrusted to SI Sudhir Rathi for further necessary action. It is stated that SI Sudhir Rathi along with staff reached the spot, i.e Prem Nagar Fatak, Rakhi Market Railway Line, Zakhira, Delhi where caller (Petitioner herein) was found present at the spot and he showed the dead body of deceased Dalbir Singh, which was in two pieces on two different places on the railway track. It is



stated that the Petitioner herein tried to give the incident a colour of train accident. It is stated that in the meantime, Babloo (complainant), who is the relative of deceased Dalbir Singh also reached the spot and he told the Police that he was also informed about the incident by the Petitioner herein. It is stated that since there were discrepancies in the narration of the Petitioner herein, he was interrogated thoroughly, on which he confessed that he was friends with the deceased's wife and he liked her. Petitioner herein stated that the deceased used to harass his wife. It is stated that on the date of the incident the wife of the deceased had gone to her sister's house to celebrate the birthday of her niece and the Petitioner herein utilized the opportunity and called the deceased at Zakheera roundabout and took him to the deserted road of the railway line. It is stated that the Petitioner hit Dalbir Singh on his head several times with a piece of brick lying there, due to which Dalbir became distraught and the Petitioner herein threw Dalbir in front of a passing train which dragged Dalbir Singh and cut him in two pieces. Petitioner was taken to the Police Station and the present FIR got registered on the complaint of Babloo.

3. It is further stated that the phone of the Petitioner herein was searched and photographs of the wife of the deceased were found in his phone. It is stated that Call Detail Record of the Petitioner herein, the deceased and the wife of the deceased were analysed wherein it was found that the Petitioner was in touch with the wife of the deceased. The investigation further lead Police to one Anuj Kumar who stated that the Petitioner had come to him in the month of February searching for a job and he got the Petitioner a job in his own factory. It is stated that Anuj Kumar shared room with the Petitioner herein. The said Anuj also revealed that he saw photographs of the wife of



the deceased on the phone of the Petitioner herein and the Petitioner had revealed that she is his girlfriend and he used to talk to her regularly. It is stated that the photographs of the wife of the deceased were identified by Anuj Kumar as the same person whose photographs he had seen in the Petitioner's phone. The said Anuj Kumar stated that on 24.04.2019, i.e. the day of the incident, the Petitioner reached the factory at about 09:15 AM and at about 07:00 PM he stated that he had a stomach ache and left the factory.

4. In his statement under Section 161 Cr.P.C the Petitioner herein has confessed to have killed the deceased. Petitioner is in custody since 26.04.2019. His bail applications have been rejected by the Courts below.

5. The Petitioner has thereafter filed the present Application seeking bail.

6. It is stated by the learned Counsel for the Petitioner that most of the witnesses have been examined and that the Petitioner need not be kept in custody any further. Learned Counsel for the Petitioner states that the case against the Petitioner is based completely on circumstantial evidence and the Petitioner is being implicated in the present case.

7. Per contra, learned APP for the State opposes the present Bail Application.

8. Heard both the parties. It is well settled that while granting bail a balance needs to be maintained between the personal liberty of a person and the possibility of an accused evading the processes of law which may result in the subversion of justice and the erosion of administration of criminal system.

9. Petitioner is accused of a very serious crime. The facts of the case and the depositions point towards the complicity of the Petitioner. Petitioner is



accused of killing the husband of the lady he was in love with. Material on record discloses that the Petitioner won the confidence of the deceased even though he was in love with his wife. Crime has been committed in a very brutal manner and the Petitioner has tried to mislead the Police at first and has also tried to give it a colour of an accident. Material on record indicates that 12 witnesses have been examined and a few public witnesses remain to be examined. Prosecution witnesses have supported the case of the prosecution.

10. The heinousness of crime is a very important factor which has to be kept in mind while deciding whether to grant or decline an application for bail.

11. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the Apex Court has laid down the parameters for granting or refusing the grant of bail which are as under:

- “i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii. nature and gravity of the accusation;*
- iii. severity of the punishment in the event of conviction;*
- iv. Danger of the accused absconding or fleeing, if released on bail;*
- v. character, behavior, means, position and standing of the accused;*
- vi. Likelihood of the offence being repeated;*
- vii. Reasonable apprehension of the witnesses being influenced; and*
- viii. Danger, of course, of justice being thwarted by grant of bail.”*

12. Applying the said principles to the facts of the present case, this Court



is of the opinion that there are reasonable grounds to believe that the Petitioner has committed the offence. Petitioner is accused of committing murder in a brutal fashion. If convicted, the Petitioner is likely to be sentenced to imprisonment for life or even death.

13. Even though the Petitioner is in custody for three years and three months now and substantial progress has taken place in the trial and most of the witnesses have been examined, but looking at the nature of the offence and the manner in which the Petitioner has committed the offence this Court is not inclined to grant bail to the Petitioner at this juncture.

14. Liberty is granted to the Petitioner to file a fresh Bail Application after prosecution evidence is over to enable him to prepare his defence.

15. Accordingly, the bail application is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JULY 23, 2024

Rahul