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

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Date of decision: 25th February, 2025

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BAIL APPLN. 4757/2024

BENI PRASAD YADAV

S/o. Shiv Prasad Yadav Presently in Judicial Custody

(In FIR no. 266/2017 registered at

PS: Amar Colony

.....Petitioner

Through: Ms. Malvika Kulkarni, Advocate.

Versus

STATE OF NCT OF DELHI

Through SHO

PS: Amar Colony

.....Respondent

Through: Mr. Shoaib Haider, Additional Public
Prosecutor for Respondent-State with
Inspector Rizwan Khan, P.S.Amar
Colony.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Bail Application under Section 439 read with Section 482 of the *Code of Criminal Procedure, 1973* ('Cr.P.C.' *hereinafter*) and Section 528 of the *Bhartiya Nagrik Suraksha Sanhita, 2023* ('B.N.S.S. 2023' *hereinafter*), has been filed seeking grant of Regular bail in FIR No. 266/2017, under Sections 302/397/396/412/120B of the *Indian Penal Code, 1860* ('IPC' *hereinafter*), registered at Police Station Amar Colony, New Delhi.



2. It is submitted in the Application that FIR in question was registered 11.07.2017 and Charge-sheet was filed on 07.10.2017. Charges under Sections 392/395/396/397/120B IPC have been framed *vide* Order dated 15.12.2018 against the Applicant. There are total 55 witnesses (including those 03 supplementary Charge-sheets) out of which 03 witnesses have been dropped by the Prosecution. Only 31 witnesses have been examined till date, while the examination of remaining Prosecution witnesses is likely to take substantial amount of time. The Applicant is in Judicial Custody 03.12.2017 and there is no reason for his incarceration to be extended further.

3. It is submitted by the Applicant that all the public witnesses have been examined and it is only the formal witnesses who remain to be examined and there is no risk of influencing the witnesses or tampering with the evidence. His continued judicial custody is no longer necessary, particularly considering that the entire case property is with the Investigating Agency and he has already undergone seven years of incarceration.

4. It is further submitted that as per the case of the Prosecution on 11.07.2017, a call was received from a man at about 05:25 AM that when he reached back home at around 03:15 PM as he had entered the house by using his own spare key and found that the almirah of the house was open and ransacked. His wife was found lying dead on the bed and her face and neck were covered with packing tape while her hands and legs were tied with cloth pieces and rope.



5. It is alleged that the house-help Rajan was tied in the same room at the corner and was unable to move. The Complainant immediately made a PCR call. The Investigating Team was told by the Ambulance team that the woman was found dead.
6. The house-help Rajan was untied and he disclosed that at around 12 PM., he was at home along with the deceased when the other house help, co-accused Balram@Rohan and 3-4 men entered the house and talked to the co-accused Balram in sign language. It was stated that one of the men caught hold of the house-help Rajan and the other men approached the deceased and asked her to hand over the keys of the almirah. When she refused to do so, they took her to the bedroom and wrapped her face and neck with a packing tape making it difficult for her to breathe, while her hands and legs were tied with cloth and pillow case.
7. In the meanwhile, hands and legs of house help Rajan were tied using a *chunni* of the deceased. The accused persons allegedly stole the jewellery, gold and silver articles and cash from the house of the deceased, while leaving the lady to die and the house help in the state of helplessness.
8. The Applicant's Application for Bail filed before the learned Additional Sessions Judge was dismissed *vide* Order dated 21.11.2024 stating that at the time of the incident, the Applicant was present at the place of the incident. However, in the absence of any CDR, there is no plausible evidence to establish his presence or involvement of the Applicant in the alleged incident.
9. It is contended that as per the Prosecution the Applicant deliberately



turned off his mobile phone at the time of alleged offence and his last known location was Defence Colony which is the place close to the place of alleged offence. However, this last known location of the Applicant i.e. Defence Colony merely falls in the proximity but fails to establish direct involvement of the Applicant in the alleged offence.

10. It is further asserted that neither of the SIM-cards allegedly used by the Applicant at the time of the alleged offence, were registered in his name. There is no evidence to substantiate that these phone numbers were linked to the Applicant, particularly, when no mobile phone containing the said SIM card has been recovered from him at the time of arrest.

11. Furthermore, no effort has been made by the Investigating Agency to record the statement of the Shopkeeper who sold the SIM cards in question to identify the individual who purchased them. It is apparent from CDR of the co-accused that they were continuously in constant contact with each other. However, closer look of the CDR of the Applicant shows that he did not receive or make any calls to any of the accused persons immediately before or after the alleged incident. The case of the Prosecution is based on conjectures rather than on facts.

12. The incriminating evidence against the Applicant is that five chance prints were lifted from the spot, one of which has been found identical to the specimen left thumb impression of the Applicant. It is claimed that the chance print lifted was partial and unclear. Moreover, no D.D. entry or statement of the witness was recorded at the time of lifting the chance prints. There is no documentation by the Prosecution to show how and when his



finger prints were taken after his arrest. The evidence of getting finger print match is unreliable. Furthermore, the finger prints of the Applicant could not have been taken without the prior permission of the learned Magistrate and is hit by bar of Section 5 of *Identification of Prisoners Act, 1920*.

13. The FSL report in regard to matching of Chance Prints with the finger print of the Applicant, creates a serious doubt about the credibility of the finger print analysis.

14. The Prosecution has also relied upon a Button, which was recovered from the scene of crime which allegedly was that of his shirt which was allegedly recovered after his arrest on 03.12.2017, i.e. after five months of the alleged incident, which again is not believable.

15. Further, the other incriminating evidence relied upon by the Prosecution is the recovery of jewellery and cash from the possession of the Applicant. However, the currency notes and coins allegedly recovered pursuant to disclosure of the Applicant, do not bear any distinctive marks or unique identifier to establish that they were stolen from the scene of crime or from the deceased.

16. Essentially, the prosecution has relied upon disclosure statement of the Applicant recorded on different date, but it cannot be held to be reliable.

17. There is no cogent evidence or record with regard to the identity of the Applicant. The Applicant had participated in Test Identification Parade on 07.12.20217 but the house held Rajan was unable to identify him in the TIP proceedings. His testimony has also been already recorded by the learned Trial Court.



18. It is further contended that there is lack of independent witness and of any alarm being raised by PW Rajan, the alleged eye witness. The totality of circumstances reflects that that there is no cogent incriminating evidence against him and he has been falsely implicated. Moreover, he is in judicial custody since 03.12.2017 and trial is likely to take long time. Hence, the regular bail is sought in the present petition.

19. *Status Report has been filed on behalf of the Respondent-State* wherein the entire of chronology of events and the arrest of the accused persons has been explained. It is submitted that there are CDR call records, chance finger prints, and recovery of a shirt button which connects the Applicant to the crime. Also, there is recovery of jewellery and stolen goods from his possession. It is a serious offence where a woman had been strangled by tying her face and neck with a packing tape and her hands and legs with cloth pieces. Considering the entire sequence of events and also that 34 prosecution witnesses out of 55 have already been recorded and the trial is proceeding at its normal pace, the Bail Application is opposed.

20. **Submissions heard and record perused.**

21. The charges against the Applicant are of murder and dacoity along with the co-accused persons. The Applicant is one of the co-accused, who along with Balram, the co-help of the deceased had entered into the house with the connivance of Balram and committed the offence of dacoity and murder in the most heinous way by taping the face and neck with the packing tape and tying the hands and legs with cloth pieces and rope, of the lady.



22. Essentially, the grounds for seeking bail are that there is no incriminating evidence against him as has been detailed in his Application, but the credibility of the evidence can be tested only at the time of final stage and no opinion as to the merits or demerits of the evidence, can be given at this stage.

23. The other ground on which the bail is sought that there is an inordinate delay in recording of evidence. However, it cannot be overlooked that there was practically a complete lock down since March, 2020 till February, 2022 on account of Covid Pandemic. Pertinently, while it has been claimed that there is a delay but it cannot be overlooked that where there are about 55 Prosecution witnesses to be examined. It cannot said there is a delay as 34 Prosecution witnesses, which include almost all main witnesses, have already been examined. It cannot be said that the trial has been delayed inordinately which entitles him to the grant of bail.

24. Considering the gravity of the offence and also that the trial is progressing at its own pace, no case is made out for grant of bail.

25. The Bail Application is hereby, rejected.

**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 25, 2025

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