

IA No. 01/2024
Bail Application of the accused Ravi
in SC 325/2021
State Vs. Sumit & Ors.
FIR No. 70/2021
Under Sections 302/301/394/397/120B/34 IPC
PS Kishan Garh

28.05.2024

**File is taken up today on an application under
Section 439 CrPC for seeking regular bail of the accused Ravi.**

Present: Sh. S.K. Kain, Ld. Addl. PP for the State.
Sh. Rajesh Rathore and Sh. Shailesh Nagar, Ld.
Counsels for the accused/applicant.
IO Inspector Sunil Gupta in person.

1. Supplementary charge-sheet containing the FSL result is received from the court of Ld.MM.
2. Reply to the bail application has already been filed. Arguments on the bail application are heard. The case file, application and its reply are carefully perused. The CCTV footage of the camera installed outside the house of the deceased, contained in a pen-drive, is watched on the computer of the court.
3. Briefly stated, this FIR u/s. 302 IPC dated 09.02.2021 was lodged at PS Kishan Garh on receipt of PCR call to the effect 'brought dead Heena w/o Raja in Fortis Hospital, Vasant Kunj North' which was reduced into writing vide DD No.5A and it was assigned to SI Matloob for necessary action. The MLC of deceased Heena was obtained wherein the concerned doctor has reported "patient was brought in an unresponsive state and CLW over neck region approx. 3 x 1 cm

over anterior aspect blood over hair region”. On inspection of dead body, a cut mark was found on the left side of its neck from where blood was oozing. Thereafter, IO Inspector Sunil Kumar went to the house of deceased i.e. H.No.80/9, Kishan Garh village, ND, Room No.5, 2nd Floor. He found something scattered on the mattress which was lying on the floor. The floor and mattress were having blood stains. Crime team was called at the spot, inspection was got conducted and photographs were also taken. On the instructions of crime team, pullandas of the mattress having blood stains and one green colour blood stained chunni were prepared after wrapping them in a separate white cloth, they were sealed with the seal of MA and the same were seized vide seizure memo. The other exhibits lying there were also collected, they were sealed with the seal of MA and seized vide seizure memos.

4. During investigation CCTV footage of the camera installed near the place of incident was collected wherein it was seen that in the night of 09.02.2021, at about 1:22 am, one person was entering in the building and in the same night at about 1:24 am, two persons were seen entering inside the said building and at about 1:43 am they all three were seen coming out of the said building. Thereafter, at about 1:46 am, another person was seen coming out of the opposite building. During investigation co-accused Sumit was arrested on 10.02.2021 and co-accused Arun Diwakar @ Chhota and Amit @ Chuha were arrested on 11.02.2021. The applicant/accused Ravi was arrested on 11.02.2021 and since then he is in custody. The applicant Ravi got recovered the mobile phone of deceased from his house and

he also got recovered his blood stained clothes. The weapon of offence i.e. knife was got recovered at the joint instance of the applicant, co-accused Arun Diwakar @ Chhota and Amit @ Chuha. The CDRs of mobile phones of all the accused persons were obtained and their analysis demonstrate they all were present in the area of Kishangarh in the intervening night of 08/09.02.2021 between 01:00 am to 2:30 am. As per prosecution, accused Sumit was a paramour of the deceased Tarannum @ Heena who had strained relations with her husband Shakib @ Raja and she was pressurizing him to marry him. Therefore, he connived with his three friends including applicant to commit her murder and pursuant to the said conspiracy, they all murdered her. After conclusion of investigation, charge-sheet for the offence u/s. 302/120B/201/34 IPC was filed against all the said four accused persons including the applicant.

5. Vide order dated 23.03.2023, the applicant and other three accused persons were charged for the offences punishable u/s. 302/120B/34 IPC; charge u/s 201/120B IPC was framed against accused Amit @ Chuha, Arun Diwarkar and applicant Ravi and charge for the offence punishable u/s. 380 read with Section 411 IPC was framed against applicant Ravi. During trial, Sh. Rajeev Dubey, husband of the deceased Sh. Shakib @ Raja, Sh. Shahnawaj, Sh. Saleem, Sh. Naseem Khan, Dr. Ashish Kumar and Sh. Prakash Saxena were examined as PW1 to PW7 respectively.

6. Supplementary charge-sheet containing FSL report dated 30.04.2024 reflects that the blood stains on the knife recovered at the instance of applicant and other two co-accused

persons matched with the blood of the deceased. It further reflects that DNA could not be generated from the blood stains on the seized clothes of the applicant.

7. Ld. Counsel for the applicant submits that he has been falsely implicated in this case. He submits that there is no direct admissible incriminating evidence against the applicant. He submits that the knife was falsely planted upon him. He further submits that mobile phone number 8377949394 purported to be his number belongs to one Mahesh Prajapati as per its CAF and he had no concern with it. He further submits that the prosecution has not even examined the said Mahesh Prajapati to connect the applicant with the said mobile phone. Therefore, any analysis of the call detail records of the said mobile number cannot connect him with the present offence. He submits that the present case is based upon the circumstantial evidence as there is no direct eye witness of the alleged incident of murder. He further submits that husband of the deceased and other public witness have already been examined. The trial of the present case is likely to take considerable time. He submits that no fruitful purpose would be served by further curtailing his liberty. With these submissions, he has sought release of the applicant on bail.

8. On the other hand, Ld. Addl. PP for the State assisted by the IO has opposed the present application. He submits that the applicant has committed a grave offence which entails severe punishment. He submits that the mobile phone of deceased was recovered from the house of applicant. He submits that the applicant also got recovered the weapon of offence i.e. knife. As per report of the FSL, the blood stains on the said knife

matched with the blood of the deceased. Therefore, the said knife has been conclusively established to be weapon of present offence. He further submits that if released on bail, he may commit other offences and may threaten the witnesses. Further, if the applicant is released on bail, he may flee from justice contemplating the possibility of conviction in this case. With these submissions, he has sought dismissal of the present bail application.

9. The applicant is not identifiable in any of the CCTV footages of the CCTV cameras installed near the place of incident. Further, the prosecution has not attempted to collect and place on record any scientific evidence in the form of face/body recognition technique in the CCTV footages for comparison of face/body of the persons seen entering the house of the deceased with the applicant. In absence of any conclusive CCTV footage, the case of the prosecution qua the applicant is based upon circumstantial evidence.

10. The alleged mobile of the applicant i.e. 8377949394 is found to be in the name of one Mahesh Prajapati on the basis of its CAF. The prosecution has failed to identify and examine said Mahesh Prajapati. There is no admissible evidence on record to connect the applicant to the said mobile phone. Therefore, alleged call detail record and location chart of the said mobile phone purportedly connecting with the main accused and this crime cannot be read against the applicant. Further, the alleged weapon of offence i.e. knife was recovered from an open place /park at the joint co-disclosure of the applicant to co-accused persons namely Arun and Amit. The evidentiary value of the said

recovery can only be evaluated after the conclusion of trial as it is required to be determined whether it falls in exception of confession of the accused as laid down in Section 27 of Evidence Act or not. The same cannot be determined in isolation but has to be appreciated by taking into account all the established facts of the case and the said stage shall come only at the end of the trial. Similarly, the impact and relevance of recovery of mobile phone of the deceased from the applicant can be properly appreciated after the complete facts of this case would be available for evaluation.

11. It is settled law that when the case is based solely on circumstantial evidence, the chain of circumstances has to be so complete that it leaves no reasonable ground for any other conclusion except for the hypothesis of guilt of the accused person. The probative value of the evidence would be considered at the time of final argument. At this stage, it cannot be that the prosecution has been able to prove the guilt of the applicant beyond reasonable doubt. It is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to bail. [Ref: **Ram Govind Upadhyay v. Sudarshan Singh: (2002) 3 SCC 598**].

12. All the public witnesses have been examined and therefore, the apprehension of the prosecution that the applicant may influence or threaten the public witnesses, if released on bail, no more exists. The report of the IO is conspicuously silent about the previous criminal involvement of the applicant. The trial of the present case is likely to take considerable time. He is

in custody for the last more than three years. He is stated to have deep roots in society and therefore, his flight risk is negligible. No fruitful purpose would be served by further curtailing his liberty. The applicant/accused is stated to be young man of 24 years of age. Thus, his further incarceration in jail with the hardened criminals shall be detrimental for the chances of his reformation. In order to afford fair trial to the applicant, he must be given an opportunity to prepare for his defence and that would not be possible while being in custody. Further, this court is conscious of the settled principle of bail that “Bail is rule and jail is an exception”. The said sacrosanct principle is one of the crucial guiding factor for disposing off bail applications.

13. In the above facts and circumstances and in the interest of justice, applicant **Ravi** is admitted to bail on furnishing personal bond in the sum of Rs.25,000/- (Rupees Twenty Thousand only) with one surety in the like amount subject to the following conditions :-

- I. He shall regularly appear in the court during trial of the case;
- II. He shall not tamper with the evidence;
- III. He shall not contact the complainant or any other witness and shall not pressurize them, induce them or extend any kind of threat to them; and
- IV. In case of change of address, he shall intimate the same to the court.

14. The bail bonds are not furnished.

15. The observations made while disposing off the present application shall not tantamount to the expressions on the merits of the case. The application is disposed off accordingly.

16. A copy of this order be sent to the concerned Jail

Superintendent for information. At request, copy of this order be also given *dasti* to the ld. Counsel for the applicant.

17. The supplementary charge-sheet be returned and it be awaited after formal order of committal from the concerned Ld. MM.

18. Put up for PE on the date already fixed i.e. **09.07.2024.**

(Dheeraj Mor)
ASJ-06/NDD/PHC
New Delhi:28.05.2024