

IA No. 4/24
application of accused Arun Diwarkar and Amit @ Chuha
in SC 325/2021
State Vs. Sumit & Ors.(5)
FIR No.70 /2021
PS Kishan Garh
Under Sections 302/120B/201/34 IPC

30.07.2024

File taken up today on joint application u/s. 439 CrPC for seeking regular bail of the accused persons namely Arun Diwarkar and Amit @ Chuha.

Present: Sh. S.K. Kain, Ld. Addl. PP for the State.
Sh. V.K. Gautam and Ms. Nirmala, Ld. Counsels for both the accused/applicants.
IO Inspector Sunil Kumar Gupta in person.

1. Reply to the bail application is filed by the IO. Its copy is supplied to the other side.
2. 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 separate white clothes, 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 intervening night of 08/09.02.2021, at about 01:42:46, one person was entering the building of the deceased. Further, at about 01:44:43, two persons were seen entering inside the said building and at about 02:03:08, they all three were seen coming out of the said building. Thereafter, at about 02:28:24, the accused Sumit along with two other persons were seen taking the deceased in the TSR. As per prosecution, the first person who was seen entering the building at 01:42:46 was Arun and the other two persons seen entering the building at 01:44:43 were Ravi and Amit @ Chuha. One of the other two persons who is

seen accompanying the accused and the deceased at 02:28:24 is identified as Rajiv Dubey, neighbour of the deceased (star witness of the prosecution).

5. During investigation, the co-accused Sumit was arrested on 10.02.2021 and co-accused Ravi was arrested on 11.02.2021. Both the applicants Arun Diwakar @ Chhota Gabbar and Amit @ Chuha were arrested on 11.02.2021 and since then they are in custody. The co-accused Ravi got recovered the mobile phone of the 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 co-accused Ravi and both the applicants Arun Diwakar @ Chhota Gabbar 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 applicants 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.

6. Vide order dated 23.03.2023, both the applicants along with other two accused persons were charged for the offences punishable u/s. 302/120B/34 IPC; charge u/s. 201 IPC was framed against co-accused Sumit; charge u/s 201/120B IPC

was framed against both the applicants Amit @ Chuha, Arun Diwarkar and co-accused Ravi and charge for the offence punishable u/s. 380 read with Section 411 IPC was framed against co-accused Ravi.

7. Supplementary charge-sheet containing FSL report dated 30.04.2024 reflects that the blood stains on the knife recovered at the instance of both the applicants and other co-accused person 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 co-accused Ravi. The other relevant portion of the said FSL report is as under :-

- a. Blood/DNA of deceased generated from knife, her salwar, her shirt, brassiere, underwear and her blood stains on bed sheet matched with the blood/DNA on the jacket and lower of applicant **Amit @ Chuha**;
- b. DNA profile generated from blood sample of applicant **Amit @ Chuha** is matching with the male DNA profile generated from source of exhibit nail clippings of the deceased; and
- c. DNA profile generated from Blood sample of the applicant **Arun Diwakar @ Chhota Gabbar** is matching with the DNA profile generated from source semen stains on bed sheet.

8. Ld. Counsel for the applicants submits that they have been falsely implicated in this case. He submits that there is no direct admissible incriminating evidence against the applicants. He submits that the knife was falsely planted upon

them. 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 their liberty. The co-accused Ravi with similar allegations has already been granted bail and therefore, the applicants are entitled to be released on bail on the ground of parity.

9. On the other hand, Ld. Addl. PP for the State assisted by the IO has opposed the present application. He submits that the applicants have committed a grave offence which entails severe punishment. He submits that the applicants 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 submits that DNA generated from the blood of the applicant Amit @ Chuha matched the male DNA generated from the nail clipping of the deceased and DNA generated from the blood of the applicant Arun matched with the DNA profile generated from the semen stains on the bed sheet of the deceased. Therefore, their presence at the spot at the time of the incident and their complicity in commission of the present offence has been conclusively established. He further submits if released on bail, they may commit other offences and may threaten the witnesses. Further, if the applicants are released on bail, they may flee from

justice contemplating the possibility of conviction in this case. With these submissions, he has sought dismissal of the present bail application.

10. The applicants are not entitled to this relief on the ground of parity. In respect of the co-accused Ravi, there is no conclusive scientific evidence on record to establish his presence at the place of the incident. Admittedly, the applicants are also not identifiable in the CCTV footage of the camera installed near the place of incident. However, their presence at the place of incident has been established on the basis of the call detail records and location chart of their mobile phones. Further, the FSL report dated 30.04.2024 establishes the presence of both the applicants at the place of incident on the date and time of its occurrence. The DNA generated from the nail clippings of the deceased matched with the DNA generated from the blood of the applicant Amit @ Chuha and the DNA generated from the semen on the bed sheet of the deceased matched with the DNA generated from the blood of the applicant Arun. Besides, blood of the deceased was found on the clothes of the applicant Amit @ Chuha. Both the applicants were residents of Malviya Nagar, New Delhi which is about 9 - 10 kms. away from Kishangarh village where the incident took place. There is no justifiable reason for the applicants to be present at the place of incident at such an odd hour. Their established presence at the place of incident coupled with presence of DNA of the applicant Amit @ Chuha in the nail clippings of the deceased clearly indicates towards their complicity in the present offence.

11. The allegations against the applicants are very

serious in nature which entails severe punishment. In these circumstances, if released on bail, there is a possibility that the applicants may run away from justice or tamper with the evidence to escape the lawful ramifications of this trial. Therefore, no ground is made out for allowing the present application. Hence, it is **dismissed**.

12. At request, a copy of this order be given *dasti* to the Ld. Counsel for the applicant and the IO.

13. Put up for RPE on the date already fixed i.e. 21.08.2024.

(Dheeraj Mor)
ASJ-06/NDD/PHC
New Delhi:30.07.2024