

IA No. 33/2024
SC No. 417/2018
State Vs. Arvind @ Binda
FIR No. 375/2018
PS: Gokul Puri
U/s: 302/34 of IPC

04.9.2024

**ORDER ON APPLICATION FOR GRANT OF BAIL
FILED BY THE APPLICANT/ACCUSED ARVIND @ BINDA**

1. This order of mine shall dispose of an application for bail filed by this applicant/accused Arvind @ Binda.
2. I have already heard the counsel for the applicant /accused and the Ld. Addl. Public Prosecutor for State.
3. Sh. R. K. Kochar, Ld. Counsel for the applicant /accused Arvind @ Binda submitted that this applicant/accused is quite innocent and has been falsely implicated in the present case and submitted that the applicant/accused has been arrested on dated 06.8.2018 on the basis of disclosure statement of the co-accused Rahis and since then, he is in judicial custody and almost six years have elapsed. He has also submitted that the prosecution has cited total 53 witnesses and till date only 11 witnesses have been examined and cross-examined.
4. Ld. Counsel for the applicant/accused further submitted that all the public witnesses including the complainant have been examined and cross-examined, so, there is no chance of tempering with the prosecution witnesses. He has also submitted that police has cited one last seen witness namely

Sadiq, but, he has not been traced out by the IO, despite several efforts and repeated directions by the Hon'ble Court.

5. Ld. Counsel for the applicant/accused further submitted that the applicant/accused was granted interim bail as per the guidelines of the Hon'ble HPC on dated 14.8.2020 and the applicant/accused had surrendered before the jail authority, after completion of the interim bail and he never misused the said liberty.

6. Ld. Counsel for the applicant/accused further submitted that the applicant/accused is not previously involved or convicted in any other case, except the present one and he is ready to abide by all the terms and conditions, if he is released on bail and submitted that more than 40 witnesses are yet to be examined by the prosecution and the prosecution will take long time to conclude the trial, so, no fruitful purpose would be served by keeping the applicant/accused in judicial custody any longer and prayed for grant of bail.

7. He has relied upon the judgment passed by the Hon'ble High Court of Delhi in **Anwar Vs. The State Govt. of NCT of Delhi & Anr.**, *Bail Appln. 1659/2024* and judgments passed by the Hon'ble Supreme Court of India in case **Javed Gulam Nabi Shaikh Vs. State of Maharashtra & Anr.**, *Criminal Appeal No. 2787 of 2024*; **Manish Sisodia Vs. Directorate of Enforcement**, *Criminal Appeal (arising out of SLP (Criminal) No. 8781 of 2024* and in case **Karan Vs. The State of Madhya Pradesh**, *Misc. Criminal Case No. 22315 of 2024*, passed by the

Hon'ble High Court of Madhya Pradesh.

8. On the other hand, Sh. F. M. Ansari, Ld. Additional Public Prosecutor for the State has vehemently opposed the present application for bail and submitted that there is sufficient evidence against the applicant/accused to show that he with the help of other co-accused murdered Neeta Pal to grab her flat and also submitted that wife of the co-accused also threatened one of the witnesses on telephone and asked her not to depose against her husband in the present case and in this regard case has been registered with the police.

9. He further submitted that there is every apprehension that the applicant/accused will threaten the witnesses upon release from the custody and will hamper the trial and submitted that the evidence of the prosecution is going on and the public witnesses, including the complainant, who have been examined till date, have supported the case of the prosecution and about 42 witnesses are yet to be examined and cross-examined, so, there is possibility of hampering with the witnesses and tampering with the evidence and possibility of fleeing away from justice by this applicant/accused cannot be ruled out, if the applicant/accused is released on bail at this stage and prayed for dismissal of the present application.

10. As per the reply filed by the IO, CDRs of the mobile phones were obtained during the investigation and locations of the applicant/accused and other co-accused were found in the area of occurrence. Calls recordings of the accused persons were

also found in the mobile phone of the deceased. There are total 53 witnesses and out of them, 26 are public witnesses and only 7 public witnesses have been examined and discharged. Many other public witnesses remain to be examined in the present case and the bail applications of the applicant/accused and co-accused Rahis Ahmad @ Sahil have been dismissed several times. There is possibility that the applicant/accused may threaten or win over the other public witnesses, if enlarged on bail, or he may abscond.

11. I have given thoughtful consideration to the submissions made by counsel for this applicant/accused and Ld. Additional Public Prosecutor for State and perused the record.

12. I have gone through the judgments relied upon by the Ld. Counsel for the accused. However, the facts and circumstances of those cases are quite distinguishable from the present case, as in the case in hand, the public witnesses, who have been examined till date, have supported the case of the prosecution.

13. It is now well settled that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. In **Siddharam Satlingappa Mhetre v. State of Maharashtra**, *Criminal Appeal No.2271 of 2010*, the Hon'ble Supreme Court has insisted upon striking a perfect balance of

sanctity of an individual's liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

“3. The society has a vital interest in grant or refusal of bail because every/criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.”

14. Ld. Counsel for the applicant/accused has very heavily relied upon the judgment of Hon’ble Supreme Court of India in **Manish Sisodia Vs. Directorate of Enforcement, 2024 INSC 595** decided on 09.8.2024. I have gone through the judgment of Hon’ble Supreme Court of India. In para 28 of the said judgment, the Hon’ble Supreme Court has cited it’s own observations made by the Hon’ble Supreme Court in it’s first order, part of which is reproduced herein below:-

“28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is

this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.”

(emphasis supplied)

15. Thus, from the above observations of the Hon’ble Supreme Court itself, it is clear that the case of **Manish Sisodia Vs. Directorate of Enforcement** cannot be equated with the present case, where the applicant/accused has been charged for committing the offence of murder and there is evidence on record against the applicant/accused. The above observation of the Hon’ble Supreme Court shows that if there are good reasons, then bail can be denied in appropriate cases. It is worth noticing that in the present case, during her testimony, PW-2 had expressed her fear for her life as she was threatened by wife of one of the co-accused not to depose against the co-accused which fact has also been verified by the IO in his reply.

16. The perusal of the record reveals that in the case in hand, this applicant/accused alongwith the co-accused is alleged to have committed murder of the deceased. Only 11 witnesses have been examined till date and 42 witnesses (including some other public witnesses) are yet to be examined and cross-

examined and in case, this applicant/accused is granted bail, he may flee away from justice. He may also temper with the prosecution evidence. All the public witnesses including the complainant, who have been examined in this case, have supported the case of the prosecution.

17. Apart from above, Court has to keep in mind nature of accusation, nature of evidence in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

18. Admittedly the trial will take its time in the present situation but considering the allegations against the applicant /accused and that witnesses have been threatened on earlier occasion, no case is made out to admit the applicant/accused on bail.

19. In the above terms, the application for grant of bail filed by applicant/accused Arvind @ Binda stands **dismissed**. Dasti copy of order be provided to the parties.

20. **Attested copy of this order be also sent to the Superintendent of Central Jail, concerned for supplying the same to this applicant/accused.**

(PUNEET PAHWA)
Special Judge (NDPS)/Addl. Sessions Judge/
North East/KKD Courts/Delhi/04.9.2024