

IA No. 1/24  
SC No. 76/20  
FIR No. 316/19  
PS Jyoti Nagar  
U/s 302 IPC  
State Vs. Ashutosh

09.07.2024

Present : Sh. Parmod Kumar, Ld. Addl. PP for the State.

This is an application u/s 439 Cr.P.C. moved on behalf of applicant/accused for grant of regular bail and the same has emanated out of a pending trial before this court.

Ld. Counsel for applicant/accused has submitted that applicant/accused is in JC since 22.10.2019; that applicant / accused has been falsely implicated in the present case; that there is no eye-witness/direct evidence against applicant/accused and he has been implicated solely on the basis of the circumstances allegedly leading to the death of deceased, such as the victim having been allegedly last seen with the applicant/accused by PW-1; that name of applicant/accused is not mentioned in DD No. 18A dated 17.09.2019 and MLC bearing no. 8583/31/19 dated 17.09.2019 of the deceased despite the fact that Mukul had allegedly seen the applicant/accused in the street outside their house and had suspicion that he was the one who had assaulted their mother; that IO has not attempted to check for any CCTV Cameras installed in the locality of the deceased so as to place the applicant/accused on the alleged spot despite the fact that there is an Axis Bank ATM located on the same street as the house of the deceased to make sure whether the

applicant/accused was seen running in the street after commission of the alleged offence by him; that IO has failed to procure the finger prints of the applicant/accused to match with the finger prints found on the murder weapon, if any, so as to connect the murder weapon to him; that there are substantial improvements and material contradictions in the testimonies of PW1 & PW2; that material witnesses in the instant case have already been examined; that applicant/accused undertakes to furnish sound surety to the satisfaction of this court and to abide by all the conditions imposed by the court, in case he is released on bail. Thus, Ld. Counsel has prayed for grant of regular bail to the applicant/accused.

Per contra, Ld. Addl. PP for the State has opposed the present application by referring to the allegations against the applicant/accused in the present case. He has contended that applicant/accused is involved in two other criminal cases; that he may threaten the complainant and influence/intimidate the witnesses in case bail is granted to him. Thus, it has been prayed that application may be dismissed.

I have heard the arguments addressed on behalf of both the sides and perused the material available on record.

In brief, the prosecution case is that on 17.09.2019 an information was received at P.S. concerned from GTB hospital vide DD No. 18A w.r.t. admission of Shiksha Devi W/o Sh. Gopal Sharma by her son Mukul; that on receipt of said information, ASI Naresh Kumar along with Ct. Bobby reached GTB hospital and obtained MLC of Shiksha Devi, wherein doctor mentioned that *A/H/O Found lying injured at above*

*mention address around 11:20 am on 17.09.2019 as stated brought by and unfit u/o blunt;* that thereafter ASI Naresh Kumar along with Ct. Bobby reached at H. No. A-234, Gali No. 6, Meet Nagar, Delhi where no eye witness was found; that on the ground floor of the said house, they noticed blood spots and some small pieces of bone; that trail of blood was also found to be going towards upstairs; that upon reaching first floor, blood and some pieces of bone were found in one of two rooms, which is situated on the right side; that thereafter crime team was called and all formalities were completed and present case FIR u/s 307 IPC was got registered; that ASI Naresh Kumar recorded the statement of Mukul i.e. son of victim, who disclosed the suspicion of involvement of his brother Ashutosh in the present case; that Ashutosh was searched but could not be traced out despite the best of the efforts; that on 21.09.2019, an information was received from GTB Hospital vide DD No. 7-A regarding demise of victim Shiksha Devi during treatment; that the dead body of victim Shiksha Devi was handed over to her family members after postmortem and S. 302 IPC was added in the present FIR; that on 22.10.2019 on the information of secret informer, Ashutosh was arrested from *Chhota Haridwar near Muradnagar Nahar*; that information of arrest of Ashutosh was given to his family members and his statement was recorded in which he admitted his involvement in the present case; that during investigation, Ashutosh got recovered one iron musli of black colour used in commission of the present case from the bushes of Meet Nagar near Railway Line; that after completion of investigation, charge-sheet was filed before the court.

At the outset, it is worthwhile to mention that allegations against the applicant are serious in nature and the manner in which the alleged offence has been committed is extremely violent. Pertinently, charge-sheet in the present case was filed and after framing of charge against applicant/accused for the offence under Section 302 IPC, this matter is at the stage of prosecution evidence now. Importantly, PW1/complainant seems to have largely supported the prosecution version and in addition to it, other material witnesses too seem to have deposed on the lines of prosecution case. Further, the contention by Ld. Counsels for applicants/accused persons that there are several discrepancies, inconsistencies and contradictions in the testimonies of public witnesses, so applicant is entitled to bail, also is bereft of any merit as it is settled law that court should refrain from deep analysis as to the credibility of a witness and should further refrain from appreciation and meticulous evaluation of evidence on record at the stage of consideration of bail. Suffice it to state that discrepancies, if any, in the testimony of witnesses are to be appreciated at an appropriate stage and same are not to be seen at the stage of bail.

Further, the contention by Ld. Counsel that applicant/accused is entitled to bail in view of the fact that he has remained in JC for last more than four years also does not have any force in the light of the fact that period of incarceration by itself would not entitle the accused to be enlarged on bail. Pertinently, the subsequent conduct of applicant/accused was not beyond suspicion as he fled after the incident and could only be apprehended after more than one month of the incident. In

addition to this, recovery of *musli* i.e. the weapon of offence used in the present incident has been effected at the instance of applicant/accused after more than one month and yet the blood present on the said *musli* is stated to have matched with the blood of deceased. Further, as per supplementary charge sheet, subsequent opinion has been obtained as per which *external injury nos. 1 and 2 mentioned in the PM report of the deceased are possible with the said musli and these injuries are sufficient to cause death in ordinary course of nature, individually and collectively.* Also, applicant/accused is stated to be previously involved in a criminal case and given the audacity with which the offence alleged has been committed, the likelihood of applicant/accused causing harm to his father and brother, who had deposed against him during the course of evidence in the present case, cannot be ruled out. Moreover, the offence alleged against the applicant/accused person is punishable with imprisonment for life or with death.

Thus, in the light of above discussion and considering the severity of punishment with which the offences entail and in view of abhorrent nature of act stated to have been committed as well as facts and circumstances in totality, this court is not inclined to grant bail to the applicant/accused person.

Accordingly, the present bail application of applicant/accused Ashutosh stands dismissed.

(Vineet Kumar)  
ASJ-02/E-Court (Shahdara)  
KKD/Delhi/09.07.2024