

IN THE COURT OF MS. SURABHI SHARMA VATS,
ASJ-04, SHAHDARA,KARKARDOOMA COURTS : DELHI.

SC No. 120/2023, IA No. 03/2024
STATE VS. Asad Totla
FIR NO. 715/2022
PS Jafrabad
U/s 302/201/120B/34 IPC

18.12.2024

This is an application U/s 483 BNSS for grant of regular bail moved on behalf of applicant/ accused Asad Totla

Present: Sh. S.K. Dubey, Ld. Addl. PP for State.
Sh. Kaushal Kumar, Ld. Counsel for the accused/
applicant.

1. It is submitted by Ld. Counsel for the applicant/ accused that applicant/ accused has been implicated in the present case on the basis disclosure statement of co-accused persons; that the main accused persons are Amaan and Atif who have actually killed the victim/deceased; the mobile phone being used in Jail is stated to be recovered from co-accused Almas@ Allu @ Salman and that no recovery has been effected from the accused/ applicant.

2. Ld. Counsel for the accused/ applicant has further submitted that no witness could be examined till date after framing of charge on 30.05.2024 due to one reason or another and thus, trial is likely to take time; that applicant/accused has already undergone more than 1 year 8 months custody; charge-sheet has already been filed and investigation is already complete and no purpose would be served in keeping the applicant/accused

in judicial custody; that applicant/ accused may be enlarged on bail and applicant/accused shall abide by all the directions which this court may please to impose upon him.

3. Per-contra, Ld. PP for the State has strongly opposed this bail application while submitting that accused/ applicant is a habitual offence involved in 'n' number of criminal cases including this murder case; that the allegations and offences against the accused/ applicant are quite grave in nature; that as per the case of the Prosecution, on the intervening night of 19/20.11.2022, a PCR call was received vide DD No. 104B stating

; that when SI

Manish reached at the spot, he found that one injured person was lying on the street with blood at the scene; the injured was shifted to JPC Hospital where the doctor declared him "Brought dead". Later, the deceased was identified by Beat Constable Kapil as Mohd. Amir @ Tori, son of Sabir, resident of H. NO. C-213, Gali NO. 9/5, Kanija Masjid, Chauhan Bangar, Delhi and present case FIR was registered.

On the basis of the investigation, accused persons Amaan, Atif, Almas @ Salman @ Allu and Arish @ Harish were arrested; it came to light that accused Abid @ Sonu @ Nakka and applicant/accused Asad @ Totla (who were incarcerated in Jail) are also actively involved in criminal conspiracy to murder Amir @ Tori; it was further disclosed that the crime was committed according to a plan devised by these accused persons including accused/applicant Asad @ Totla.

3. Ld. Addl. PP has further submitted that murder of the victim/deceased has been committed in a pre-meditated manner in order take revenge from victim/deceased Asad @ Totla, as one of the accused namely Almas @ Salman @ Allu had apprehension that the victim/deceased Amir @ Tori had secretly informed the Police regarding him, due to which he was apprehended and his leg was injured. Therefore, a criminal conspiracy was hatched by accused Almas @ Salman @ Allu along with applicant/accused Asad @ Totla other co-accused persons to kill deceased/ victim Amir @ Tori. Accordingly, in execution of their plan and conspiracy hatched between all the accused persons, accused Amaan and Atif brutally murdered the victim Amir @ Tori in a pre-meditated manner.

4. It is further stated that though the applicant/accused Asad @ Totla was in Jail at the time of incident, but he along with co-accused Almas @ Salman @ Allu were in continuous touch with the other co-accused persons through a phone in the Jail; that three mobile phones and two SIM cards have also been recovered from the possession of the co-accused Almas Khan @ Salman @ Allu by the Jail authorities, who was lodged in the same barrack with applicant/accused Asad @ Totla; that CDR details reveals that applicant/ accused and other co-accused persons were in continuous touch with each other and even on the day of incident, they were in contact with each other.

5. It is further submitted by Ld. Addl. PP for the State that though the mobile phones and SIM cards are not recovered from the possession of the applicant/accused Asad Totla but his

active involvement in the conspiracy cannot be denied at this stage.

6. It is further submitted by Ld. Addl. PP for the State that applicant/ accused is a habitual offender, involved in nine other criminal cases; that applicant/accused has no fixed or permanent residence in Delhi and is likelihood to abscond or evade the legal process; that none of the witnesses in the present case have been examined yet, therefore, there is every possible likelihood that the applicant/ accused may try to influence or intimidate the witnesses and may threaten them; the applicant/accused can also try to tamper with the evidence. Moreover, applicant/ accused being a habitual offender can again indulge in some other criminal activity and as such, he is a threat to the society at large and therefore, applicant/accused may not be enlarged on bail.

7. Arguments on this application heard. Record perused.

8. This Court is mindful of the rule of law that liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Thus, the fundamental principle is of Bail and not Jail. However, the liberty of an individual is not absolute and the society by its collective wisdom through the process established by law can withdraw that liberty if that individual becomes a potential danger to the societal order. Therefore, the discretion granted to the courts U/s 437 and 439 Cr.P.C. (now, Sections 480 & 483 of Bhartiya Nagarik Suraksha

Sanhita, 2023), needs to be exercised cautiously and carefully by balancing the Rights of the accused and interests of the society/public at large.

9. As per the case of prosecution, accused/ applicant Asad @ Totla alongwith other co-accused persons entered into a criminal conspiracy to kill the victim/deceased Amir @ Tori and in pursuance of that criminal conspiracy, deceased/victim was brutally murdered by co-accused persons namely Amaan and Atif.

It is well settled principle of law that at the stage of determining the question of bail, minute/ detailed evaluation of the facts and appreciation of evidence on merits, is not to be done.

It is stated by Ld. Addl. PP for the State that though the applicant/accused Asad @ Totla was in Jail at the time of incident, but he and co-accused Almas @ Salman @ Allu were in continuous touch with the other co-accused persons through mobile phone in the Jail; three mobile phones and two SIM cards have also been recovered from the possession of the co-accused Almas Khan @ Salman @ Allu by the Jail authorities, who was lodged in the same barrack with applicant/accused Asad @ Totla; that CDR details reveals that applicant/ accused and other co-accused persons were in continuous touch with each other even on the day on incident; that mere non-recovery of the mobile phone and SIM cards from the possession of the applicant/accused cannot rule out the possibility of applicant/accused being active conspirator of the plan whereby, victim/deceased Amir @ Tori was brutally murdered.

The allegations against the accused/applicant are quite serious and grave in nature; trial of the matter is at initial stage and that none of the witnesses in the present case has been examined yet, therefore, there is every possible likelihood that the applicant/accused may try to influence the witnesses and may threaten them; the accused/ applicant is also stated to be a habitual offender, involved in other criminal cases including this murder case thus, possibility of the accused/ applicant again indulging in criminal activities or similar crimes or threatening or inducing the witnesses also cannot be ruled out at this stage.

Considering the enormity of the offences alleged, severity of the punishment which the alleged offences entails coupled with the above-stated reasons, this Court does not find it a fit case to grant bail to the accused/ applicant Asad @ Totla, at this stage. Therefore, the present bail application stands, **dismissed**.

9.

Copy of the order be given dasti to Ld. Counsel for applicant/ accused and to the I.O, as per rules. Bail application stands disposed off.

(SURABHI SHARMA VATS)
ASJ-04, Shahdara/KKD Court
Delhi/18.12.2024