

06.09.2019

FIR NO. 940/2014

U/s: 302/201/364/457/380/411/404/34 IPC

P.S. Dwarka North

State Vs. Parmod Kumar & Ors.

S.C. NO. 440255-2016

Present: Sh. Dushyant Siwatch, Ld. Addl. PP for the state.

Sh. Sat Narain Sharma, Counsel for accused Atul Kumar.

Sh. Mazzam Ali, Proxy counsel for complainant.

Bail application of accused Atul is listed today for arguments.

The counsel for complainant present today in the court has been asked to address his arguments on the bail application listed today for arguments to which he has stated at bar that they have nothing to argue.

Arguments have been heard today.

In the application, it has been stated that accused is a married man, having a family comprising of his wife and a son aged about 3 years. It is stated that accused was granted bail vide order dated 27.02.2015 by the Hon'ble Court, however the bail order was challenged by the complainant and the Hon'ble High Court was pleased to allow the prayer of complainant. It is stated that accused challenged the order of Hon'ble Delhi High Court in *Hon'ble Apex Court vide case SLP (Cri) No. 4451/17* but Hon'ble Apex court did not interfere with decision of Hon'ble High Court and directed to accused to surrender before the court vide order dated 18.07.2017. It is stated that pursuant to the order of Hon'ble Apex Court, the accused surrendered before the court and since then he is in judicial custody.

It is stated even since date of his surrender, despite direction of Hon'ble Apex Court for expeditious conclusion of trial, preferably within 6 months from 18.07.2017, the prosecution has failed to conclude the evidence

and delay is not attributable to the accused. It is stated that non-appearance of prosecution witnesses has delayed the trial of instant matter. It is further stated that accused was granted interim bail by this Court on 08.06.2018 and on 25.07.2018 and he has not misused the bail granted by this court and never attempted to approach the prosecution witnesses. It is argued that evidence recorded so far, clearly spells out lots of contradiction in the testimony of witnesses and he has nothing to do with the death of Ratan Chand Papneja.

It is averred that accused was the sole breadwinner of the family but due to incarnation, the family of accused has been suffering and wife of the accused has to earn for the family in the current state of illness and wellbeing of Master Reyansh. It is stated that accused is ready to bear any condition as this Hon'ble Court may deem fit to allay its fear of non-availability of accused for trial and accused undertakes to appear before the court as and when directed and would cooperate in expeditious disposal of the matter and accused has all clean antecedents except present false case.

On the other hand, Ld. APP for the state and counsel for complainant have opposed the bail application of the accused on the ground that valuable life of deceased has been lost. Ld. APP for the state has argued the facts of the case in brief to the effect that on 13.10.2014, Inspector K. K. Sharma, SHO, PS-Babri, District Shamli, UP alongwith his staff was on duty for checking of vehicles. At about 10.30 p.m. a Ford Figo car No. DL1CM 9765 came from Shamli Side. The car was stopped by police official by using barricades and driver of car was asked to show the papers of said and three persons namely Parmod Kumar, Rohit Gupta and Gulshan Sharma were found to be seated in the said car. Upon checking, dead body of one Rattan Chand Papneja was found lying in the dicky of said Ford

Figo Car. During interrogation, they disclosed that they had committed the murder of said Rattan Chand Papneja and they were going to dispose of the dead body of deceased. Thereafter, UP police registered the case FIR No. 277/14 U/s 302/201 IPC at PS-Babri District Shamli UP. Later on, investigation of said FIR was transferred to PS, Dwarka North and present FIR No. 940/14 was registered.

It is argued by Ld. APP for the state that case is still at the stage of prosecution evidence and witnesses are still remaining to be examined, thus, it is prayed that application of accused Atul seeking bail may be dismissed.

In rebuttal to the arguments of State, the counsel for applicant has relied upon judgment passed by *Hon'ble High Court of Delhi in case titled as Neelam Vs. State (2007[4] JCC 2668)* and argued that in said case, the Hon'ble Court admitted the applicant on regular bail on the good conduct of applicant who was admitted in interim bail time to time and neither threatened the witnesses nor tempered with the evidence. It is argued that applicant has been implicated in the present case only on the disclosure statement of co-accused persons and same is not admissible as per the Evidence Act. It is argued that every day spent in judicial custody is itself a fresh ground for admitting the applicant on regular bail.

The Ld. Counsel for applicant has further relied upon judgment passed by *Hon'ble Chhattisgarh High Court in case titled as Amit Jogi Vs. State of Chhattisgarh and Anr. (2006 CrI. L. J. 3349)* in support of his contention and submitted that in the given case, the Ld. Trial Court did not complete the trial within the specified time and Hon'ble Court considering the fact that applicant is well educated, not having any objectionable antecedent/past criminal record and he had not been indulged

in tempering of witnesses, admitted the applicant on bail.

Ld. Counsel for applicant has further relied upon judgment passed by *Hon'ble High Court of Delhi in case titled as Santosh & Tunda Vs. State of NCT of Delhi (2008[2] JCC 1276)* wherein the case of prosecution was that the dead body of deceased was recovered on 08.06.2005 and the statement was recorded by police on 22.06.2005 and applicant was stated to be a young man of about 19 years and only bread earner of the family and family which was at the verge of starvation due to petitioner being in judicial custody, hence applicant was directed to be released on bail. Attention of court is further drawn to the judgment passed by *Hon'ble High Court of Delhi in case titled as Aman Gaur Vs. State of NCT of Delhi (2012 [1] JCC 415)* where the Hon'ble High Court decided the ratio that in the cases of serious nature, no accused shall be denied regular bail if there are no chances that he will flee from the process of law. Further reliance is placed upon judgment passed by *Hon'ble Orissa High Court in case titled as Surath Behera Vs. State of Orissa (1988 CRL. L. J. 1508)* wherein it was held that “*it is settled principle, successive bail application by an accused are not barred, as there is nothing like a principle of Resjudicata operation in the field.*”

It is further argued that role assigned to accused of taking away the original documents of alleged shops is falsified from the evidence of prosecution witness Anjali Pahwa. The counsel for accused has also drawn attention of this court to the call record to assert that although the role assigned to the applicant is that he alongwith the co-accused had gone to house of deceased wherein the house was ransacked, valuables were removed however, the call record procured by prosecution belies this

hypothesis of prosecution. It is argued that case of prosecution is based upon circumstantial evidence and evidence qua applicant is weak and does not call for detention of applicant precisely when previous conduct of applicant is satisfactory and applicant is also ready to bind himself with stringent conditions.

After going through the arguments of both the parties and perusing the documents and evidence available on record, this court is of the view that applicant had not misused the concession of interim bail previously granted to him and he has surrendered on time without fail. There is no allegation that applicant had ever tried to threaten prosecution witnesses or tried to temper with evidence. The perusal of record shows that public witnesses have already been examined in this case and there is no chance of influence or threaten the witnesses. This court does not feel that applicant will flee from the processes of law as he is a married person and has roots in the society.

It is further important to note here that applicant was admitted on regular bail by Ld. Predecessor court vide order dated **27.02.2015** when charge sheet was just filed and same was set aside by Hon'ble High Court vide order dated **23.05.2017** and now considerable time has already been passed and applicant has already remained in jail for considerable time in JC. It is observed that applicant is having his wife and minor son and there is no one available in the family to look after them. It is further observed that applicant was not found with dead body and the call record does not show the accused leaving the city. His case is now on different footing from other accused persons as other two accused persons were apprehended on the spot with dead body. There is direct evidence against other accused persons but case of accused Atul is based on circumstantial evidence.

The trial of case is almost complete as 23 witnesses have been examined till date by prosecution and only 6-7 witnesses are remaining to be examined and thus case has come on last stage. So there are changed circumstances when the previous bail application of accused was decided. It is also important to note here that only evidence till now in the present case against accused Atul is that car seized in the present case was in the name of wife of accused Atul and there are oral statements of family members of deceased that there were some property dealings between deceased and accused Atul and there is no eye witness but there is no documentary evidence of those property details.

In view of the above discussion, considering the charge sheet filed against the applicant and evidence on record and arguments of parties and the judgments and law relied upon by Ld. Counsel for accused, the bail application of accused Atul is allowed and accused is admitted on bail subject to furnishing the bail bond in sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of the court. With the above directions, the application stands disposed of.

However, it is made clear that any observation made above will not be any expression of opinion on the merits of the case and if changed circumstances, the state will also be at liberty to move for cancellation of bail.

Copy of the order be given dasti. Copy thereof be also sent to the jail superintendent for information and compliance.

Be put up for PE on date already fixed i.e. 11.09.2019.

(AJAY GOEL)
ASJ/ Spl. Judge (NDPS)
Dwarka Courts, New Delhi/06.09.2019