

I.A. No. 42/2024
SC No. 307/2021
FIR No. 289/2020
Police Station: GTB Enclave
State vs. Varun

Video Conferencing Link of the Court is functional.

13.03.2024

Order on Bail Application.

Present: Shri Pradeep Kumar, Ld.Addl.PP for State.
Shri Manish Kumar Singh, Ld. Counsel for
accused/applicant
Shri Rohit Yadav, Ld. Counsel for complainant
appearing through video conferencing.
Shri M.N. Kural, Ld. Counsel for complainant in person

1. This is an application u/s 439 Cr.P.C for grant of regular bail moved on behalf of applicant/accused Varun.
2. Arguments already heard.
3. The facts of the as discernible from the chargesheet are as follows: That on 05.09.2020 from 08:41 pm to 08:46 pm, three PCR calls, regarding shooting of a the deceased/victim (Ekta Joshi) by some unknown persons, were received at PS GTB Enclave. The same were lodged vide DD No. 86-A, 87-A and 88-A. On receipt of information, Insp. Arun Kumar alongwith staff reached at the spot i.e. H. No. 358-363, Janta Flat, GTB Enclave, Delhi. At the spot, it came to their notice that Ekta Joshi was shot by two unknown assailants. However, the deceased had already been shifted to Max Hospital, Patparganj, Delhi. Thereafter, IO alongwith staff reached the hospital, where the deceased was declared dead by the treating doctor. The treating doctor had mentioned on the MLC '*multiple gun shot, wounds over chest, abdomen, perineum, both upper arms, brought dead, gun shot injury*'. Subsequently, Insp. Arun Kumar recorded statement of Ashish

Joshi and got the present FIR no. 289/2020, PS GTB Enclave registered.

In his statement, Ashish Joshi has *inter-alia* stated that on 05.09.2020, at about 08:30 pm, he alongwith his mother Anita Joshi and sister Ekta Joshi (deceased) came to their house in a car. When Anita Joshi and deceased, after alighting from the car, proceeded towards the door of house, two persons came on a scooty and the pillion rider fired upon the deceased Ekta Joshi 3-4 times and fled away. Thereafter, he alongwith other persons took the deceased to Max Hospital, Patparganj, where she was declared dead.

4. It is stated by Ld. Defence counsel that accused/applicant has been falsely implicated in the present case by complainant and other witnesses in connivance with police officials. It is stated that accused/applicant has been undergoing judicial custody since 23.04.2021 and is not required for further custody. It is argued that there is no direct evidence of the alleged involvement of accused/applicant in the present case and he has been implicated merely on the basis of his call detail records and location of his mobile phone with allegations that he kept surveillance on the activity/movement of deceased Ekta Joshi. It is the argument that applicant had no dispute with the deceased either regarding property or the area and as such, he had no motive to conspire with any other accused to get the victim killed. It is further argued that there is no allegation either of commission of offence of murder or of criminal conspiracy against him.

It is further argued that none of the eye witnesses already examined by prosecution has deposed anything incriminating against accused/applicant. It is contended that the remaining prosecution witnesses are not eye witnesses and have nothing to depose against accused/applicant as per their statement u/s 161 Cr.P.C. It is the

argument that considering the period of custody of accused/applicant and on grounds of parity with co-accused Varsha (who has been admitted to regular by Hon'ble High Court of Delhi), Simran Chaudhary, Manzoor Ilahi, Farida and Shahid accused/applicant be also admitted to bail.

5. The bail application has been opposed by Ld. Addl. PP for State and Ld. Counsel for complainant arguing that there are serious allegations of hatching a criminal conspiracy for murder of deceased/victim against accused/applicant. It is argued that there are other prosecution witnesses left to be examined and therefore, no ground to enlarge the accused/applicant on bail is made out. It is argued that a few eye witnesses have turned hostile to the case of prosecution after grant of bail to co-accused Simran and therefore, no ground to enlarge accused/applicant on bail is made out.

6. Submissions heard. Record perused.

7. As per record and order on charge dated 22.08.2022, accused/applicant Varun has been charged for commission of offence u/s 120-B IPC r/w Sec. 302 IPC.

The case of prosecution against accused/applicant is based largely on the CDR and the location of the mobile phone allegedly used by him. There is no eye witness of the alleged role of accused/applicant in the present case.

8. It is observed that PW-3 Anita Joshi, PW-6 Akash, PW-5 Ashish Joshi, PW-7 Akil Ahmad and PW-8 Shamshad who are eye witnesses of the alleged incident as per the case of prosecution have already been examined and cross-examined at length.

It must be noted that co-accused Simran Chaudhary was the alleged beneficiary of the death of victim Ekta Joshi. As noted in the previous bail order dated 20.09.2023, there is no specific allegation except the mere suspicion of the witnesses that co-accused

Simran Chaudhary got the deceased murdered. The said co-accused and another co-accused namely Varsha have already been admitted to regular bail. Even if the case of prosecution is accepted, accused/applicant Varun provided information about the location of victim to co-accused Amir. It is not the case of prosecution that accused/applicant was benefited monetarily for alleged assistance to the other co-accused.

9. It would not be out of place to observe that all the eye witnesses of the alleged incident cited by prosecution have already been examined and cross-examined. Prosecution has cited a few more public witnesses, however, none of the said witnesses is a witness of the alleged incident or a witness of any fact against accused/applicant. The prosecution case against accused/applicant Varun being based on call details, shall be proved by the official witnesses only. As such, the apprehension of Ld. Counsel for complainant that witnesses may be threatened or influenced, is misconceived. The argument of Ld. Counsel for complainant that a few prosecution witnesses turned hostile to the case of prosecution after grant of bail to co-accused Simran, cannot be considered against accused/applicant Varun as there is no complaint against him by any of the witnesses at any point of time. His name has nowhere surfaced in the investigation of any case concerning the alleged threat to the witnesses.

10. Considering the overall facts and circumstances of this case as discussed above, the material placed on record by the prosecution, the deposition of all the eye witnesses, the statements of other prosecution witnesses u/s 161 Cr.P.C, the fact that accused/applicant has been charged only for the offence of criminal conspiracy, the fact that similarly placed co-accused namely Varsha @ Rahul Singh, Manzoor Ilahi, Simran Chaudhary, Farida and Shahid have been admitted to bail and also considering the period of custody

of accused/applicant, this Court is of the opinion that there are reasonable and justified grounds to admit accused/applicant to bail. Accordingly, bail application is allowed.

Accused/applicant Varun is admitted to bail on furnishing Bail Bond in the sum of Rs. 50,000/- with two sureties in the like amount to the satisfaction of this Court.

11. The bail is further subject to the condition that applicant/accused shall not approach any of the prosecution witnesses directly or indirectly. He shall also not threaten or influence any of the prosecution witnesses. He shall attend the Court hearing on regular basis and shall intimate any change of his address to the IO/Court immediately. The applicant shall not leave NCR without prior permission of this Court. The applicant shall also furnish details as per Annexure – B of the judgment of Hon'ble High Court of Delhi in case titled '*Sunil Tyagi vs. State*'. The applicant shall also not indulge in commission of any criminal offence during the tenure of bail. Breach of any of the conditions shall be a ground for cancellation of bail.

12. Nothing in the present order shall tantamount to expression of opinion of this Court on the merits of this case.

13. Application is disposed of accordingly.

14. In compliance of directions of Hon'ble Supreme Court in case titled '*In Re: Policy Strategy for Grant of Bail*', *Writ Petition (Crl.) No. 04/2021 dated 31.01.2023*, copy of this order be sent to applicant through concerned Jail Superintendent for information.

(ARVIND BANSAL)

Addl. Sessions Judge -05 (Shahdara)
Karkardooma Courts, Delhi/13.03.2024