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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 198/2023

ISHWAR SINGH

..... Petitioner

Through: Mr. Aditya Aggarwal and Mr.
Naveen, Advocates.

versus

STATE

..... Respondent

Through: Mr. Shoaib Haider, APP for the State
with Inspector Rajesh Meena, P.S.:
Gulabi Bagh.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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09.05.2023

CRL.M.A. No.1680/2023 (Exemption)

Exemption granted, subject to just exceptions.

The application stands disposed of.

BAIL APPLN. 198/2023

By way of the present petition under section 439 of the Code of Criminal Procedure 1973, the petitioner seeks grant of regular bail in case FIR No.268/2020 dated 11.12.2020 registered under section 302 of Indian Penal Code, 1860 and sections 25/27/54 of Arms Act, 1959 at P.S.: Gulabi Bagh.

2. Notice on this petition was issued on 01.02.2023, consequent whereupon status report has been filed under cover of index dated 06.03.2023.
3. In compliance of the orders of this court, the State has also filed an additional status report dated 04.05.2023, enclosing therewith the Call

Detail Records (CDRs) that are relevant for purposes of the present petition.

4. Nominal roll dated 10.04.2023 has also been received from the Jail Superintendent.
5. Mr. Aditya Aggarwal, learned counsel appearing for the petitioner submits, that the only evidence that the prosecution cites against the petitioner is a disclosure statement alleged to have been made by the petitioner, pursuant to which however nothing was recovered. Mr. Agarwal submits, that there is also a disclosure statement of co-accused Harish *alias* Janu, which also implicates the petitioner; however, nothing was recovered pursuant to that disclosure statement either.
6. It is submitted that the allegation is that the petitioner disclosed the location and movements of deceased Vikas to co-accused Harish, who (latter) communicated the same to the assailant Sumit, who shot and killed the deceased. Mr. Agarwal contends, that even the CDRs now placed on record by the State only show that on the fateful day *i.e.* 11.12.2020, the petitioner made 03 cell-phone calls to co-accused Harish on the latter's cell-phone number from the Chandni Chowk area. These calls, it is alleged, were made at 13:24, 13:38 and 13:51 hours.
7. Mr. Agarwal however points-out that as recorded in the additional status report based on the CDRs, it is also seen that the petitioner had made 147 calls to co-accused Harish in the year 2020. This, counsel explains, was for the reason that the two of them were friends and neighbours. It is also pointed-out, that admittedly, the petitioner was not present at the place of the incident.

8. It is submitted that the contents of the cell-phone calls are unknown, nor is there any evidence to show any co-relation between the calls made on 11.12.2020 with the offences alleged. In the circumstances, Mr. Agarwal argues, there is no credible evidence that will stand the test of the law, to return the finding of guilt against the petitioner.
9. On the other hand, Mr. Shoaib Haider, learned APP opposes to grant bail arguing that the CDRs show three things : (i) that on the date of the incident *i.e.* 11.12.2020, the petitioner called co-accused Harish at a time just before the time of the alleged offence;(ii) that the petitioner had visited Kucha Ghasiram, Chandni Chowk 21 times in the year 2020, which is the place from where deceased Vikas had picked-up *hawala* money, the plan of the accused persons being to rob the deceased, in which process he (latter) was killed; and (iii) that the petitioner was part of a network of individuals who used to identify persons carrying *hawala* money and would target them, in the same manner that they targeted the deceased.
10. Charges have been framed in the matter. Prosecution evidence has not yet commenced. The order framing charges has been challenged by the petitioner, which matter is pending before a Co-ordinate Bench. There are stated to be about 36 prosecution witnesses, who will be required to be examined during the course of trial.
11. The nominal roll in respect of the petitioner reflects that he has been in custody for more than 02 years and 03 months as of 10.04.2023; that he is not implicated in any offence; and that his jail conduct has been 'satisfactory'.

12. The solitary piece of evidence against the petitioner appears to be the CDRs, which show that he was in telephonic communication with co-accused Harish, without any insight as to what the contents of the calls were; and that pursuant to the disclosure statements made by the petitioner and co-accused Harish, nothing has been recovered. As per the prosecution's own case, the petitioner was not present at the place of the incident; nor is he alleged to have been the assailant. The worst case against him is of being of an informer, who informed the co-accused of the location of the deceased.
13. The petitioner has been in judicial custody for more than 02 years; the trial involving about 36 prosecution witnesses, is bound to take considerable time.
14. In the circumstances, the petition is allowed, thereby admitting the petitioner/Ishwar Singh son of Ramjeet Singh to *regular bail* pending trial, subject to the following conditions:
 - 14.1 The petitioner shall furnish a personal bond in the sum of Rs.30,000/- (Rs. Thirty Thousand Only) with 01 surety in the like amount *from his father*, who is ordinarily a resident of Kolkata, to the satisfaction of the learned trial court;
 - 14.2 The petitioner shall furnish to the Investigating Officer/S.H.O a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

- 14.3 If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 14.4 The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
15. Nothing in this order shall be construed as an expression of opinion on the merits of the matter.
16. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
17. The petition is allowed in the above terms and stands disposed-of.
18. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 9, 2023/ak