

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

+ **Bail Appn. 1283/2009**

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Date of reserve : 09.09.2009
Date of decision:16.09.2009

VIDYA ...PETITIONER
! Through: Mr.S.P.Kaushal, Advocate

Versus

\$ STATE ...RESPONDENT
^ Through: Mr.Navin Sharma, APP along with
Inspector T.C. Khola, P.S.Najaf Garh

***FIR NO. 102/2005
U/S 365/302/201/120B/420 IPC &
P.S. NAJAFGARH***

**CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG**

1. Whether the Reporters of local papers
may be allowed to see the judgment? YES
2. To be referred to Reporter or not? YES
3. Whether the judgment should be
reported in the Digest? YES

: **MOOL CHAND GARG, J.**

1. This order shall dispose of the bail application filed by the petitioner, Vidya, who is facing trial in a case arising out of FIR No. 102/2005 under Sections 365/302/201/120-B/420 IPC registered at Police Station Najafgarh and is in judicial custody since 21.02.2005. The case of the prosecution against the petitioner is based upon the circumstantial evidence, which is basically consisted of two facts:-

(i) She narrated her involvement in this case i.e. regarding the murder of Raj Kumar @ Raju in the presence of Pradeep Sharma, who appeared before the trial Court as PW-6. However, this witness has not supported the case of the prosecution and was declared hostile.

(ii) The recovery of katta, which as per the prosecution story was arranged by the petitioner to commit the murder of Raj Kumar @ Raju as the also the recovery of gold chain of the deceased from the residence of the petitioner at the instance of disclosure statement by co-accused Rajeev @ Monu, an English translation of which is annexed with this petition as Annexure A-7.

2. Briefly stated, the facts of this case are that on 15.1.2005 pursuant to an information received in the Police Station Uttam Nagar vide DD No.51-B with regard to a 'missing report', police reached House No.201, Gali No.2, Sainik Enclave, Near Gandhi Chowk, Mohan Garden, Uttam Nagar, New Delhi. The statement of Smt. Mor Kali @ Rani w/o Ram Chander was recorded there. In her statement, she complained about the 'missing' of her son. She stated that her son had left home at about 12.00 noon on 13.01.2005 for going to the house of the petitioner. Later, when it was revealed to the Police Officials that the matter pertained to the area of Police Station Najafgarh, the complaint was referred to Police Station Najafgarh vide DDNo. 6-B on 16.01.2005. According to the case of prosecution,

efforts were made to trace out Raj Kumar @ Raju but to no effect. Subsequent thereto on 12.02.2005 Smt.Mor Kali made another statement stating about her family background and antecedents of her son Raj Kumar @ Raju. In her statement she had stated that her son had left home for going to the house of the petitioner. She also stated that her son was having two mobile phones but had left one mobile phone at the residence. She further stated that her son called up and asked for a diary containing telephone numbers of his acquaintances. She has also stated that when she asked about the return of her son, he told that he would be back within 1 to 1-1/2 hours, but he did not return. According to the complainant she made efforts to know about the whereabouts of her son but all in vain. It is also said in the statement that when she contacted the petitioner, it was told to her that the deceased had accompanied his friend Rajeev @ Monu and also that she did not know as to where they both had gone. Later, on the basis of a statement allegedly made on 12.02.2005 a case vide FIR No. 102/2005 under Section 365 IPC was registered with Police Station Najafgarh. On 21.01.2005 an unclaimed, unidentified dead body was discovered in the area of Police Station Bahadurgarh. According to the police the dead body had injuries on the head and an FIR vide No. 21/05 under Section 302/201 IPC was registered with Police Station Bahadurgarh. The said dead body was then connected with this case and thereafter, the co-accused Rajeev @ Monu was arrested and interrogated on 18.02.2005. Later, on the basis of his disclosure statement recorded on 21.02.2005, the present petitioner was apprehended

on 21.02.2005. Upon completion of the investigation, the charge sheet was filed in the Court and the charges were framed in this case on 10.11.2005. The prosecution has already examined 9 witnesses. The petitioner moved an application for bail before the trial court which was dismissed vide order dated 03.10.2008. Subsequent thereto, another application was moved but the same was also dismissed by the trial court vide order dated 17.01.2009. Aggrieved of the orders dated 17.01.2009 and 03.10.2008, the petitioner preferred a bail application bearing No. 455/2009 in this Court. However, in view of the fact that during the pendency of the bail application some more witnesses were examined in the trial court, who did not support the case of the prosecution, the petitioner wanted to invoke the jurisdiction of the trial court again and thus, moved an application for withdrawal of bail application No. 455/2009 and this court vide order dated 1.5.2009 granted permission to withdraw the bail application. Thereafter, the petitioner preferred another application for bail before the trial court, however, the same was dismissed vide order dated 19.05.2009. Hence, the present bail application before this court.

3. It is submitted on behalf of the petitioner that the petitioner is innocent and has been wrongly implicated in this case. It is further submitted that the name of the petitioner did not find mention in the first disclosure statement of the co-accused Rajeev @ Monu made on 18.02.2005 and that there is an inordinate delay in the registration of the FIR in this case as the incident occurred on 13.01.2005 whereas the FIR was registered on 12.02.2005. It is

also submitted that the petitioner has been arrayed as an accused only as a conspirator. Admittedly, there is no evidence/allegation of her involvement in the alleged offence. The prosecution has not been able to establish the motive of the petitioner either in the chargesheet or in the evidence of the complainant, who was examined as PW-1 before the trial court. The trial court dismissed the application for bail vide order dated 17.01.2009 without appreciating the material change in the circumstance that PW-3 Hoshier Singh, an independent witness to the recovery of katta (weapon of offence), had not supported the case of the prosecution even remotely and was declared hostile. Even PW-6 Pradeep Sharma, who allegedly over heard the conversation between the petitioner and co-accused Monu on 9.1.2005 at the house of the petitioner while they were planning to commit the murder of Raju (now deceased) has not supported the case of the prosecution and was declared hostile. It is further submitted that there are other serious lacunae in the case of the prosecution with regard to the alleged dead body. As per the record of the prosecution the age of the alleged deceased in the death report is 35-36 years whereas in the 'missing report' the age is stated to be 23 years. Besides that, length of the body also does not tally with the height given in the missing report. It is further submitted that the alleged dead body was recovered on 21.01.2005 and the probable time of death in the post mortem report is given as 48-72 hours, whereas the whole case of the prosecution is that the deceased was allegedly killed on 13.01.2005 itself, which further demolishes the case of the prosecution to a great extent. It is

an admitted fact that co-accused Rajeev @ Monu and the deceased were friends and knew each other very well before the alleged incident. Thus, even the inference cannot be drawn that the petitioner was instrumental in introducing them to each other. It is also submitted that the alleged phone diary, containing the phone numbers of the acquaintances of the deceased, has also not been seized/placed in the judicial file. The recovery of the alleged dead body had taken place on 21.01.2005 whereas the present case was registered on 12.02.2005 i.e. after a lapse of about 23 days of the alleged discovery of the dead body. PW Ramesh, the witness to the effect of last seen, has also not supported the case of the prosecution. It is further submitted that the petitioner is a woman and is languishing in jail for the last more than 4 years. It is further submitted that earlier she was admitted to interim bail and she never misused the liberty granted to her and as such, there is no likelihood of the petitioner fleeing from justice or tampering with the evidence. The petitioner is a permanent resident of Delhi and as such she undertakes to attend the court and to face the trial.

4. On the other hand, the learned APP appearing for the State has submitted that it is the case of circumstantial evidence and the petitioner is facing trial as a conspirator with the other co-accused person. It is also submitted that merely because one of the witnesses has not supported the extra-judicial statement made by the petitioner that does not shatter the case of the prosecution. It is also submitted that the recovery of weapon also proves the complicity of the petitioner in this case.

5. At this stage, suffice it to say that the evidence prima facie relied upon by the prosecution against the petitioner is not sufficient to keep the petitioner further in judicial custody. Moreover, she is a lady and is in judicial custody for more than four years. Her custody cannot be continued awaiting some other evidence which may or may not come against her and that also of the police witnesses with regard to the recovery of katta and gold chain from her residence at the instance of co-accused, Rajeev @ Monu. Even if any other evidence comes on record, the same will have to be taken into consideration along with other facts at the time of final disposal of the case.

6. Taking into consideration that the petitioner is in judicial custody for a period of more than four years, she is admitted to bail on her furnishing bail bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the trial court.

7. The Petition stands disposed of.

MOOL CHAND GARG, J.

SEPTEMBER 16, 2009
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