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

+ + **BAIL APPLN. 167/2013**

RAJESH DEVI @ LALLY ..... Petitioner

Through: Mr. S.K.Rungta, Sr. Advocate with  
Mr. S.P. Kaushal and Mr. Amit  
Anand, Advocates

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Sunil Sharma, Additional Public  
Prosecutor for respondent-State.

**BAIL APPLN. 286/2013**

MAHINDER @ MONU ..... Petitioner

Through: Mr. S.K.Rungta, Sr. Advocate with  
Mr. S.B.Sharma, Advocate

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Sunil Sharma, Additional Public  
Prosecutor for respondent-State.

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**ORDER**

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**21.05.2013**

In the above captioned two applications, petitioners are seeking regular bail in FIR No. 142/2011 under Sections 365/302/120-B/34 of the IPC., registered at Police Station Baba Hari Das Nagar, Delhi.

This case is based upon circumstantial evidence. The first circumstance is of mobile call details of accused persons. The second

circumstance alleged against petitioners is that on the date of the incident itself i.e. on 28<sup>th</sup> January, 2011 petitioner-*Rajesh Devi* had extended threat to get husband and son eliminated because they were objecting to the illicit relations of petitioner- *Rajesh Devi*.

According to Learned Additional Public Prosecutor, there are call details of 28<sup>th</sup> January, 2011 as well as 29<sup>th</sup> January, 2011 to show that petitioners were in active complicity in commission of the offence in question through their mobile phones and that petitioner- *Rajesh Devi* had paid ₹20,000/- to her co-accused *Mahinder* for getting her son eliminated and the balance amount of ₹1,80,000/- was paid after son of petitioner- *Rajesh Devi* was murdered. It was pointed out by learned Additional Public Prosecutor for respondent-State, payment of ₹20,000/- was paid by petitioner- *Rajesh Devi* to her co-accused in December, 2010 or in January, 2011 and the balance amount of ₹1,80,000/- was paid in February, 2011 after son of petitioner- *Rajesh Devi* was murdered and for this purpose, petitioner- *Rajesh Devi* had sold her property. Rejection of this application sought by Learned Additional Public Prosecutor by relying upon the aforesaid two material circumstances.

Learned senior counsel for petitioners submitted that the mobile call details stands explained from the charge sheet wherein it is noted that petitioner- *Rajesh Devi* used to talk to mother of co-accused-*Mahinder* who was her friend and so on this weak circumstance, conviction of the accused persons cannot be secured.

Regarding circumstance of petitioner- *Rajesh Devi* extending threats on 28<sup>th</sup> January, 2011 in the Police Station where the complaint of father of the deceased against petitioner was compromised, learned senior counsel,

asserted that said circumstance cannot incriminate petitioners because it is highly unlikely that after compromising the matter with her husband and son, she would extend threats to get them eliminated. On behalf of petitioners, learned senior counsel contended that material witnesses have already been examined and trial of this case is likely to take time and petitioners are in custody since August, 2011, so they deserve bail.

Mr. S.B. Sharma, learned counsel for petitioner-*Mahinder* had also pointed out during the course of hearing that the circumstance of last seen with the deceased stands belied from the mobile call details of petitioner which indicate that petitioner-*Mahinder* was in his village between 07.00 am to 11.00 am on the alleged day, whereas according to prosecution petitioner-*Mahinder* was with the deceased at 07.00 am at Railway Station, Bahadurgarh in Haryana and had taken the deceased to Punjab. On the delay aspect, it was pointed out that there is unexplained delay of eight months in lodging of the missing report by father of deceased and in fact petitioner-*Mahinder* was arrested in another case under Section 392/397 of IPC which has ended in acquittal and after his arrest in the aforesaid case, petitioner-*Mahinder* had allegedly made a disclosure statement about the commission of this offence and thus according to learned counsel for petitioner-*Mahinder*, the circumstantial evidence is of inherently weak character and so petitioners ought to be released on bail.

Learned Additional Public Prosecutor had submitted that the evidence already recorded need not be evaluated as in circumstantial evidence cases even the evidence of Investigating Officer is material and gravity of the offence disentitles petitioners to bail.

Submissions advanced by both the sides have been duly considered and the trial court record has been cursorily perused to prima facie gauge the gravity of the offence in the light of the fact that there is inordinate delay of eight months of lodging the FIR of this case. Whether the motive for petitioner-*Rajesh Devi* to get her son murdered because he was suspecting her character is strong enough or not, is the moot question which needs to be answered by the trial court and is not required to be dwelt upon by this Court as it is not deemed feasible to appreciate the evidence recorded in piecemeal. Whether the chain of circumstantial evidence is complete or not, would be also subject matter of consideration by the trial court.

Suffice it would be to say that unduly delayed FIR of this case and the fact that the deposition of material witnesses has been already recorded, renders incarceration of petitioners futile. Consequentially, without commenting on the merits of this case it is directed that petitioners- *Rajesh Devi and Mahinder* be released on bail subject to their furnishing bail bonds in the sum of ₹30,000/- each with one local surety of the like amount to the satisfaction of the trial court.

With aforesaid directions, both the applications are disposed of.

**(SUNIL GAUR)**  
**Judge**

**MAY 21, 2013**  
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