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

Date of Decision: February 04, 2015

+ BAIL APPLN. 228/2015 & CrI. M.A. No. 1669/2015

TEJPAL @ LILU & ORS Petitioner

Through: Mr. Sunil Choudhary, Advocate

versus

STATE (NCT) OF DELHI Respondent

Through: Mr. Navin Sharma, Additional
Public Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Petitioners are brother-in-law (*Devar*), sister-in-law (*Devrani*) of the deceased and the third petitioner is son of first two petitioners, who seek pre-arrest bail in FIR No. 2113/2014, under Section 302/34 IPC, Police Station Mehrauli, Delhi on the ground that the deceased had set herself on fire with the hope that she would be saved and she had done so due to property dispute.

At the hearing, it was submitted by learned counsel for petitioners that at the instance of father-in-law of the deceased, a complaint was filed and on its basis an FIR No. 2114/2014 was registered regarding deceased committing suicide. It is submitted on behalf of petitioners that the instant FIR is false and motivated and that petitioner no. 1 was in the hospital

and husband of the deceased had taken his wife to the hospital after she had set herself on fire and even petitioner no. 3 was not present at the time and place of the incident. Thus, it is submitted that petitioners deserve the concession of pre-arrest bail as they are ready to join the investigation.

This application is seriously opposed by learned Additional Public Prosecutor who had drawn the attention of this Court to the dying declaration of the deceased. It was pointed out that the dying declaration of the deceased clearly implicates petitioners - accused persons and the plea of alibi taken by them is not substantiated and that FIR No. 2114/2014 is an after-thought and so petitioners do not deserve the concession of pre-arrest bail.

The parameters governing pre arrest bail in serious offences like instant one, as reiterated by Apex Court in *Jai Prakash Singh v. State of Bihar* (2012) 4 SCC 379 are as under: -

“18. This Court in Siddharam Satlingappa Mhetre [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514 : AIR 2011 SC 312] after considering the earlier judgments of this Court laid down certain factors and parameters to be considered while considering an application for anticipatory bail: (SCC pp. 736-37, paras 112-13)

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) the nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice;

(iv) the possibility of the accused's likelihood to repeat similar or [the] other offences;

(v) where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) the courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over-implication in the cases is a matter of common knowledge and concern;

(viii) while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) the court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.”

Upon hearing and on perusal of FIR of this case as well as the subsequent FIR, the material on record and the dying declaration of the deceased, I find that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. Since specific role has been attributed to the petitioners in the dying declaration, therefore, the petitioners do not deserve concession of pre-arrest bail. Even the plea of alibi raised by the petitioners does not stand substantiated.

In the considered opinion of this Court, the petitioners are not

entitled to pre-arrest bail. This application is dismissed while not commenting on merits, lest it may prejudice petitioners when they seek regular bail before the Sessions Court.

(SUNIL GAUR)
JUDGE

FEBRUARY 04, 2015

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