

#29-30

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 10.08.2015

+ BAIL APPLN. 1608/2015

RAMESH KUMAR Petitioner
Through Mr. Tanveer Ahmed Mir, Advocate
versus

STATE OF NCT DELHI Respondent
Through Ms. Radhika Kolluru, APP
SI Manohar Lal, P.S. Rajouri Garden

+ BAIL APPLN. 1609/2015

SMT SHASHI Petitioner
Through Mr. Tanveer Ahmed Mir, Advocate
versus

STATE OF NCT DELHI Respondent
Through Ms. Radhika Kolluru, APP
SI Manohar Lal, P.S. Rajouri Garden

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

CRL.M.A. No. 11413/2015 in Bail Appln. 1608/2015 (Exemption)

CRL.M.A. No. 11414/2015 in Bail Appln. 1608/2015 (Exemption)

1. Exemptions granted subject to all just exceptions.
2. The applications are disposed of accordingly.

Bail Applications 1608/2015 and 1609/2015

1. The present are applications under Section 439 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') praying for grant of regular bail in FIR No. 563/20-14 under Sections 498A/304B/34 IPC registered at Police Station Rajouri Garden, Delhi and the proceedings emanating therefrom.

2. The applicants are stated to be in custody since 22nd May, 2014. Counsel appearing on behalf of the applicants submits that public witnesses in the cases have already been examined and discharged by the trial Court. He further submits that only the official witnesses remain to be examined.

3. Counsel appearing on behalf of the applicants has drawn my attention to the order dated 5th December, 2014 in Bail Application Nos. 2629/2014 and 2632/2014 whereby the applicants had been enlarged on regular bail by this Court subject to conditions imposed on them.

4. It is urged by counsel appearing on behalf of the applicants that inadvertently at the time the applicants were enlarged on bail, the Court had been misinformed that the father of the deceased Mr. Khushi Ram, PW-1

had already been examined and that PW-2, the mother of the deceased victim was in the process of being examined.

5. It transpired that this Court cancelled the bail granted to the applicants by way of its order dated 23rd December, 2014 in view of the false statement made on behalf of the applicants on affidavit “that the examination of the public witnesses was complete on the date of filing of the present bail applications.”

6. It is now urged on behalf of the applicants that the public witnesses have already been examined and since the applicants have lived in society, they are not a flight risk; nor is there a possibility of tampering with the evidence or approaching the witnesses. In other words, counsel submits that no useful purpose shall be served by keeping the applicants in jail any longer.

7. In order to buttress his submission, that once the public witnesses have been examined, the applicants are entitled to be released on bail, learned counsel appearing for the applicants has cited the decision of ***Kharak Singh vs. State of NCT of Delhi*** decided on 15th January, 2015 in CrI. MC No. 3253/2014.

8. On the contrary, Ms. Radhika Kolluru, learned Additional Public Prosecutor appearing on behalf of the State submits that the trial is at the fag end and out of a total 21 prosecution witnesses, 14 have already been examined. The learned APP further submits that only 7 witnesses remain to be examined and the trial Court has listed the case on 7th to 9th September, 2015 for the examination of the remaining prosecution witnesses.

9. Learned APP has also urged that the applicants are facing trial in a dowry death case and that the enlargement of the brother-in-law of the deceased victim in an anticipatory bail granted by this Court by way of an order dated 31st July, 2015 does not come to the aid of the applicants since the said accused did not figure in the suicide note left on behalf of the deceased victim.

10. It is also urged on behalf of the State that the regular bail granted to the applicants by this Court by way of an order dated 5th December, 2014 was cancelled since the applicants had falsely averred in the said bail application that the evidence of the public witnesses was complete and consequently, there was no possibility of the applicants influencing the prosecution witnesses.

11. It is lastly urged by learned APP that not only the regular bail granted to the applicants on earlier occasion was cancelled on account of their having made a false statement, but notice had also been issued to the applicants therein under Section 340 Cr.P.C., 1973.

12. In the present case, it is observed that the deceased victim was married on 13th November, 2013 and died an unnatural death on 21st May, 2014 i.e. within six months of her marriage.

13. Although it would not be appropriate to comment on the testimony of the public witnesses examined at the trial suffice to observe that the clear and unambiguous testimony of the father and mother of the deceased victim/PW-1 and PW-2 respectively, clearly establishes that the accused/applicants are prima facie guilty of the offence. The testimony of PW-1 and PW-2 has remained unimpeached in cross-examination. In view of this circumstance, the decision relied upon by the applicants is of no avail to them since in *Kharak Singh (supra)*, it was clearly recorded that the testimony of the public witnesses was contradictory in nature and that the said witnesses had contradicted each other on material aspects.

14. Although proceedings initiated by this Court under Section 340 Crl.P.C. have subsequently been dropped, it was only on account of the fact

that the applicants had tendered an unconditional apology before the Court and had since surrendered.

15. It would be pertinent to mention here that in the case of *State of U.P. Through CBI v. Amarmani Tripathi*, (2005) 8 SCC 21, the Supreme Court observed as under:-

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) *character, behaviour, means, position and standing of the accused*; (vi) likelihood of the offence being repeated; (vii) *reasonable apprehension of the witnesses being tampered with*; and (viii) *danger, of course, of justice being thwarted by grant of bail* [see *Prahlad Singh Bhati v. NCT, Delhi* and *Gurcharan Singh v. State (Delhi Admn.)*]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan* : (SCC pp. 535-36, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be

undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas*).”

16. In *State vs. Captain Jagjit Singh* reported as *AIR 1962 SC 253*, the Supreme Court has observed as under:-

“5.Among other considerations, which a court has to take into account in deciding whether bail should be granted in a non-bailable offence, is the nature of the offence; and if the offence is of a kind in which bail should not be granted considering its seriousness, the court should refuse bail even though it has very wide powers under Section 498 of the Code of Criminal Procedure.”

17. Further, in the decision rendered by this Court in the case of *Sidharth Vashisth @ Manu Sharma v. State of Delhi*, 2003 (3) JCC 1846, wherein

it was *inter alia* observed that if the trial is at the fag end and is likely to be concluded, the accused may not be released on regular bail.

18. Keeping in view the gravity of the offence; the magnitude of the crime; the prima facie case against the applicants herein; severity of the punishment in the event of conviction; and the circumstance that the trial is at the fag end, I do not think that this is a fit case for grant of regular bail to the applicants herein.

19. Nothing stated in the present order shall be construed as an expression by this Court on the merits of the case.

20. The present bail applications are dismissed and disposed of accordingly.

SIDDHARTH MRIDUL, J

AUGUST 10, 2015

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