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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 883/2016

SAROJ

..... Petitioner

Through Mr Kapil Sankla and Ms. Vibha Sharma,
Adv.

Versus

THE STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through Mr Hirein Sharma, APP for the State
alongwith Insp. Ashok Kumar Police
Station Pulprahladpur, Delhi
Mr Shiva Sambyal, Adv. for
complainant

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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19.05.2016

1. Apprehending arrest in case FIR 502/2015 u/s 302/506/342/34 IPC registered with PS Pul Prahlad Pur, Delhi, the application under Section 438 Cr.P.C. has been filed by the petitioner.

2. Counsel for the petitioner submits that the petitioner is a housewife aged about 30 years having three year's old child. Her husband Dilip is in judicial custody for approximately four months. As per the FIR and the charge sheet, the admitted fact is that the family of the petitioner called 100 number on 4th /5th December, 2015 that a thief had been caught at the house of the petitioner and the same had been handed over to the police. The thief turned out to be a neighbour of the petitioner and his father alleged that the family members of the petitioner and petitioner had dragged the deceased from the gali and beaten his son (deceased) with the intention to kill him. The allegations are highly improbable as the deceased was a young man of 18 years who would have raised hue and cry if he in fact had

been dragged to the house of the petitioner in the middle of the night as alleged. House of the petitioner is admittedly in a highly populated part of the city as is evidenced from the neighbours who have been made witness in the case. The FIR was initially registered u/s 308 IPC which was converted into Section 307/506/34 IPC and thereafter to Section 302/506/342/34 IPC. No specific role has been assigned to the petitioner. Custodial interrogation of the petitioner is not required as charge sheet has already been submitted. As such, the petitioner be released on bail.

3. Reliance is placed on *Siddharam Satlingappa Mhetre vs. State of Maharashtra & Ors.*, (2011) 1 SCC 694; *Jagdish Nautiyal vs. State*, Bail Application No. 1317/2012 decided on 29.11.2012; *H.B. Chaturvedi vs. CBI*, 2010 (3) JCC 2109; *Ram Kumar Tyagi vs. State*, 1995 Cr.LJ1877; *Anju vs. State*, 2007(1) JCC 125; *Suresh vs. State*, 2011(3) JCC 1860; *Manoj Rana vs. State (NCT of Delhi)*, 2010(4) JCC 2448.

4. The application is vehemently opposed by the learned Additional Public Prosecutor for the State duly assisted by counsel for the complainant on the ground that there are specific allegations in the complaint that the deceased was beaten up by Dilip, his mother Raj Kumari, his wife Saroj and by Pradeep. The *danda* has been recovered at the instance of co-accused Dilip. It is further submitted that there is no question of entering of any thief inside the house of the petitioner as the parties are neighbours and were known to each other from before. Reference is made to the statement of the father of the deceased wherein he stated that on 4th December, 2015, his son Sagar @ Parkash had gone to her mausi's house at about 10:00 PM. Around 1:00 AM, his neighbour Manoj came to his house and informed him that cries of his son are coming from the house of Dilip. Thereupon,

he along with Manoj went to the house of Dilip and heard the cries of his son. They knocked the door but nobody opened. Thereupon he called police which came and it was only after the arrival of the police that they got the door opened. His son was badly injured. His clothes were blood stained. He informed him that he was dragged by duldul @ Dilip, Pradeep @ Tiger, mother and bhabhi of Tiger from the street and was given beatings. Thereafter he became unconscious. The injured was removed to hospital where ultimately he succumbed to injuries.

5. Learned APP further submitted that the injured sustained as many as 20 injuries and as per opinion given by the doctor, cause of death is septicemic shock consequent upon blunt trauma to abdomen. All the injuries as described are *ante mortem* in nature and caused by blunt external force/impact. It is further submitted that the applicant-Saroj and co-accused Raj Kumari are absconding. Non-bailable warrants were issued against them but they are evading arrest. Now the proceedings for declaring them proclaimed offender are going on. The accused persons and complainant are neighbours of each other and there is tension in the locality and apprehension of breach of peace. Keeping in view the gravity of offence as a young boy has been murdered by all the accused persons in connivance with each other, the accused is not entitled to the relief as prayed.

6. While dealing with the aspect of grant of anticipatory bail as embodied in Section 438 Cr.P.C., in *Siddharam Satlingappa Mhetre* (supra), Hon'ble Supreme Court laid down the following factors and parameters which are to be taken into consideration while dealing with 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 accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, 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.*

7. Further it was observed that just as the liberty is precious to an individual, so is the society's interest in maintenance of peace, law and

order. Both are equally important. While laying down the parameters which are required to be taken into consideration while dealing with the application for grant of anticipatory bail, the Court has to take into consideration the nature and gravity of accusation and the exact role of the accused.

8. Much emphasis was laid by counsel for the petitioner for submitting that it was Dilip who had given a first call to the police regarding catching hold of a thief. It was only subsequently that another call was made by the complainant to the police station about a scuffle at the same address. The thief turned out to be a boy who used to live in the neighbourhood. During the course of investigation, statements of various persons were recorded u/s 161 Cr.P.C. A perusal of statement of father of the deceased reveals that the parties are neighbours. Prior to the incident, hot words were exchanged between him and Dilip and at that time, he threatened to kill him and had also asked him to take care of his son, however, he did not take this threat seriously. On the date of incident, his son had left the house for going to his *mausi's* house at about 10:00 pm. It was only when his neighbour Manoj Kumar and Begraj came to his house and informed him that they have heard cries of his son from the house of Dilip and they knocked the door of his house but he did not open, thereupon they went to the house of Raju then all of them went to the house of Dilip and knocked the door. The same was not opened. His son called from inside to save him. Since the door was not opened by Dilip and his family members, he made a call to the police and it was only with the intervention of the police that the door was opened. They found Sagar drenched in blood. He was taken to hospital where ultimately he succumbed to injuries. Before that, Sagar informed his father that he was dragged from the street by the accused

persons including present petitioner and then was given severe beatings. As per post-mortem report as many as 20 injuries were found on his person and as per opinion of the doctor, the cause of death was due to septicemic shock consequent upon blunt trauma to abdomen and the injuries were *ante mortem* in nature. That being so, the allegations are very serious in nature and a specific role has been assigned to the applicant. Therefore, even as per the guidelines laid down by the Supreme Court in *Siddharam Satlingappa Mhetre*(supra), the petitioner does not deserve to be released on bail.

9. *Jagdish Nautiyal*(supra), was a case where it was alleged that the consent of the complainant for the marriage was obtained by misrepresentation and under the guise of so called marriage or promise to marry, the complainant was sexually abused by the accused. Keeping in view the facts and circumstances of that case, benefit of anticipatory bail was granted to the petitioner.

10. *H.B. Chaturvedi* (supra) is a case dealing with an application u/s 439 Cr.P.C. unlike the present application where application u/s 438 Cr.P.C. has been filed.

11. *Anju* (supra), is a case u/s 304A/498A/34 IPC r/w Section 302/309/34 IPC and the petitioners were jethanis and mother-in-law of the deceased. The allegations against the petitioners were found to be vague and general in nature. Therefore, they were admitted to anticipatory bail.

12. In *Suresh and Manoj Rana*(supra), the evidence against the petitioner was the disclosure statement of co-accused. In the absence of sufficient evidence available against the accused, anticipatory bail was

granted to him.

13. As such, none of the judgments help the petitioner. Specific allegations are appearing against the petitioner which are grave and serious in nature. That being so, it is not a fit case for grant of anticipatory bail.

The application is accordingly dismissed.

It is, however, clarified that nothing stated herein shall tantamount to an expression of opinion on merits of the case.

SUNITA GUPTA, J

MAY 19, 2016/*rs*