

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

% Decided on: 8th August, 2016

+ **CRL.M.C. 2829/2016**

NISHA ARYA

..... Petitioner

Represented by: Mr. Irfan Firdous with Mr. V.P. Singh & Mr. Tarunesh Kumar, Advs.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Hirein Sharma, APP with ASI Ram Avtar, PS Adarsh Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 12053/2016

Exemption allowed, subject to all just exceptions.

Crl.M.C. 2829/2016

1. Pooja and Jyoti accused in FIR No. 854/2014 under Sections 146/148/323/308/341/342/427/452/34 IPC registered at PS Adarsh Nagar were granted regular bail by the impugned order dated 9th June, 2016 challenging which the petitioner/complainant in the above-noted FIR prefers the present petition seeking cancellation of bail. At the outset, it may be noted that though the petitioner seeks cancellation of bail of Pooja and Jyoti, however they have not been impleaded as parties in the present petition.
2. The order dated 9th June, 2016 reads as under:-

“These are two separate applications under Section 439 Cr.P.C. seeking regular bail moved on behalf of applicants/accused persons. Both these applications are being disposed off together vide this common order, as they arise out of same FIR.

Arguments on both the bail applications heard. Replies perused.

Before dealing with the rival submissions made on behalf of both the sides, it may be noted that similar bail applications of the applicants were dismissed by this Court on 17.05.2016. Thereafter, similar bail applications were again preferred on behalf of the applicants before Sessions Court which came up for hearing on 31.05.2016. On said date, IO had submitted before the Court that he shall be filing the chargesheet in this case on or before 06.06.2016.

In view of the said submission, counsel of applicants fairly withdrew both the bail applications with liberty to file fresh bail applications at the appropriate stage. It is informed to the Court that chargesheet has not yet been filed by IO in this case till date.

As per allegations made in the FIR, these two applicants alongwith co-accused persons waylaid the complainant on 15.12.2015 at about 8:30 am at Adarsh Nagar Market and gave beatings to her. When complainant somehow managed to escape and ran inside the house of one Chinky in order to save herself, they broke open the door of the house of said Chinky and tried to put the complainant on fire by confining her inside the room.

It is argued on behalf of the applicants that they are quite innocent and have been falsely implicated in this case; they are in custody since 04.05.2016 and co-accused Govinda has already been granted regular bail by Sessions Court. It is further argued that the applicants are female having clean antecedents and nothing has been recovered either from their possession or at their instance. Ld. Counsel further argued that complainant is habitual litigant and she is either complainant or an accused in eleven criminal cases registered in various police stations and she being lady Advocate, is taking advantage of said fact by getting false cases registered against the applicants and their family members. Ld. Counsel further argued that the complainant gave beatings to the husband of applicant in Rohini Court Complex on 28.04.2016, due to which he sustained grievous injuries on his head and FIR no.441/16 has also been registered at PS Prashant Vihar against the complainant in this regard. He further argued that the applicants are no more required for any custodial interrogation. Ld. Counsel of applicants had also argued that there is further detention of 22 days of applicants in this case has passed after dismissal of their previous bail applications on merits. He further argued that the applicants are married women having minor children, who are suffering a lot due to continuous and long incarceration of applicants behind the jail. Therefore, both the applicants deserve to be released on bail.

Opposing, Ld. Additional PP assisted by counsel of complainant, argued that there are serious allegations against both the applicants who are named in the FIR itself. Reference was also made to relevant portion of the allegations appearing in the FIR qua these two applicants, in support of contention that specific role played by both these applicants is mentioned therein. It has been further argued that anticipatory bail

applications moved by both the applicants were dismissed by Sessions Court as well as by Hon'ble Delhi High Court in this case. Copy of order dated 25.04.2016 passed by Hon'ble Delhi High Court on anticipatory bail applications of both the applicants, has been placed on record. It has been further argued that even after the registration of FIR in question and previous FIR No.778/15 at PS Adarsh Nagar, the conduct of applicants and their family members did not improve as they again took law into their own hands by committing offences against the complainant on 08.04.2016 and 27.04.2016 within the jurisdiction of PS Prashant Vihar and two separate FIR Nos. 392/16, U/s 354/354B/509/323/34 IPC and FIR no.437/16, U/s 341/323/509/354/354A IPC have been registered with regard to said two incidents. Ld. Counsel of complainant also argued that false FIR No.441/16, U/s 323/341/506/34 IPC has been got registered by husband of applicant Pooja Sharma at PS Prashant Vihar on 28.04.2016.

Ld. Counsel of complainant further submitted that there is still reasonable apprehension of intimidation to the complainant and tampering of the evidence and in case the applicants are released on bail, it will be quite difficult for complainant to depose freely during the course of trial. He also placed on record copy of MLCs of complainant prepared at BSA Hospital on 08.04.2016 and 27.04.2016 with regard to subsequent incidents which allegedly took place on said dates for which FIR nos. 392/16 and 437/16 were registered at PS Prashant Vihar. Counsel of complainant further argued that grandmother of these two applicants lodged false FIR bearing No.248/16 under Section 451/323/506/34 IPC against Chinky who is one of the prosecution witnesses in the present FIR, at the instance of these two applicants and their family members.

He, therefore, urged that bail applications are liable to be dismissed.

I have bestowed my thoughtful consideration to the respectful submissions made on behalf of both the sides in the light of given facts and circumstances of the present case.

Undisputedly, previous bail applications of the applicants were dismissed by this Court on 17.05.2016. However, the investigation was pending at that stage and the custody of applicants was found to be of few days only at that time. Now, the applicants are shown to be in custody for a period of more than one month. The investigation is stated to have seems to be negligent inasmuch as they failed to file the chargesheet despite the fact that IO appeared before this Court on 31.05.2016 and made statement that he shall be filing the chargesheet on or before 06.06.2016.

Be that as it may, the fact of the matter is that both the applicants are female being married women having minor children to support and to be looked after by them. They are undisputedly no more required for their custodial interrogation and appropriate conditions can always be imposed upon them in order to allay the apprehension raised on behalf of complainant. Out of the offences charged in this case, all offences except offences under Section 308/452 IPC are bailable in nature. So far as, offence under Section 308 IPC is concerned, it is informed to the Court that complainant was discharged from the hospital on the same day. Trial may take considerable time and thus, no useful purpose would be served by keeping the applicants behind the bars.

Keeping in view the totality of facts and circumstances of the case, the discussion made herein above and the period of incarceration of the applicants behind the jail, the applicants/accused namely Jyoti and Pooja are ordered to be released on bail, subject to their furnishing personal bond in the sum of Rs.20,000/- each with one surety each in the like amount to the satisfaction of Ld MM/Link MM/Ld Duty MM and subject to the following conditions:-

- i. That the applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her to disclose such facts to the Court or to any other authority.*
- ii. That they shall not indulge into similar offence or any other offence in the event of their release on bail;*
- iii. That they shall not tamper with evidence in any manner;*
- iv. That in case of change of their residential address, they shall intimate the Court about the same; and*
- v. That they shall regularly appear before trial Court on each and every date of hearing.*

Both the bail applications stand disposed off accordingly. Copy of this order be sent to concerned Jail Superintendent for being delivered to the said accused.”

3. The main contention of learned counsel for the petitioner before this Court is that after this Court rejected the anticipatory bail application of Pooja and Jyoti vide order dated 25th April, 2016 and the learned Additional Sessions Judge also declined to grant regular bail vide order dated 17th May, 2016, the order impugned is a perverse order and bail is required to be cancelled. It is also urged that considering the fact that there have been

constant problems regarding parking between the parties and number of FIRs have been registered against the family of Pooja and Jyoti, no bail ought to have been granted.

4. Vide order dated 25th April, 2016 Bail Application No. 689/2016 of Jyoti and Bail Application No. 646/2016 of Pooja seeking anticipatory bail were dismissed by this Court, however the Court in the concluding paragraph noted-

“In normal circumstances the petitioners being ladies would have been entitled to a discretionary relief in their favour, however, the facts of the present case are peculiar, as the parties are resident of same/nearby locality and the quarrel took place over the parking of the vehicle. The situation is peculiar because it is not the solitary incident as prior thereto also in the year 2013 a quarrel had taken place in this regard and the matter was compromised between the parties but then again the complainant was attacked by the applicants and their family members on 27.11.2015. When she did not agree for compromise, present incident took place resulting in registration of present FIR. That being so, petitioners do not deserve the indulgence of this Court for getting the relief of anticipatory bail. Accordingly, all the applications are dismissed. It is, however, clarified that nothing stated herein shall tantamount to any expression of opinion on merits of the case.”

5. It is apparent that the Court considered the fact that the two accused were ladies and ordinarily they were entitled to discretionary relief in their favour, however considering the facts of the case this Court was of the opinion that it was not a fit case for anticipatory bail. Pooja and Jyoti surrendered on 4th May, 2016 whereafter the first applications for regular

bail was filed on 17th May, 2016. Obviously, since by that time investigation was going on and considering the nature of allegations, the learned Additional Sessions Judge dismissed the bail applications. When the second bail applications were filed which came up on 9th June, 2016 both Pooja and Jyoti had spent more than one month in custody and no more custodial interrogation was warranted as the time for police custody remand was over. Learned Additional Sessions Judge noted that except for offence under Sections 308/452, all offences were bailable and as regards Section 308 IPC, the complainant was discharged from the Hospital on the same day. Learned Additional Sessions Judge vide impugned order also noted that both Pooja and Jyoti were married women having minor children to support and to be looked after and were no more required for custodial interrogation, thus imposing appropriate conditions to allay the apprehensions raised on behalf of the complainant bail was granted. Learned Additional Sessions Judge also noted that trial may take considerable time and no useful purpose would be served by keeping them behind the bars.

6. As noted above, the conditions are stringent. For the offences invoked in the FIR, Pooja and Jyoti could not be kept in custody till the conclusion of the trial. Considering the facts and circumstances of the case, I find no reason to interfere with the well reasoned order passed by the learned Additional Sessions Judge dated 9th June, 2016.

7. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 08, 2016
‘v mittal’