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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : AUGUST 24, 2016

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CRL.M.C. 4364/2015 & CRL.M.A.No.9375/16

DINESH KUMAR

..... Petitioner

Through : Ms.Eti Solanki, Advocate.

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR

..... Respondents

Through : Mr.Raghuvinder Varma, APP.
Mr.Puneet Mittal, Advocate with
Ms.Vasudha Bajaj, Advocate for
Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present petition under Section 439 (2) read with Section 482 Cr.P.C. has been preferred by the petitioner/complainant for cancellation of bail granted to respondent No.2 (in short 'the accused') by the learned Additional Sessions Judge by an order dated 2.9.2015. The petition is contested by the accused.

2. I have heard the learned counsel for the parties and have examined the file. Petitioner's counsel urged that there were serious allegations against the accused of committing murder of his wife, Neetu.

After Neetu's marriage with the accused on 13.11.2013, she was harassed on account of dowry demands. The deceased used to suspect the accused to have extra marital relationship. When she apprised her family about it, the accused started treating her with more cruelty. In the first week of June, 2014 she suffered a miscarriage. The victim came back to her parental home on 8.6.2014. On 21.06.2014, the accused called her to meet him at Noida Sector 18 Metro Station; she did not return thereafter. DD No.40A was lodged at Police Station Kalyanpuri. On seeing the video footage captured on the public cameras installed at Metro Station Mayur Vihar, Phase-I, it was found that the deceased had caught Metro to go to Noida. In the video footage at Noida Sector 18 Metro Station, the deceased was seen with her husband/ the accused. On 24.06.2014, the FIR in question was lodged. Counsel further urged that without giving any notice to the complainant, the learned Additional Sessions Judge granted bail to the accused by the impugned order dated 2.9.2015 without imposing any substantive conditions. It is a non-speaking order and no reasons were indicated for grant of bail in such a heinous offence.

3. Reliance has been placed on *Masroor vs.State of U.P.* MANU/SC/0683/2009; *Puran etc.vs.Rambilas & Anr.* MANU/SC/0326/2001; *Kalyan Chandra Sarkar vs.Rajesh Ranjan & Anr.* MANU/SC/0214/2004; *Ram Govind Upadhyay vs.Sudarshan Singh & Ors.* MANU/SC/0203/2002; *Suresh Kumar Somabhai Rana* MANU/SC/0284/2002.

4. Learned counsel for the accused urged that there is no illegality in the impugned order as all the facts and circumstances were taken into consideration by the court below at the time of grant of bail. Reliance has

been placed on *Aslam Babalal Desai vs.State of Maharashtra* (1992) 4 SCC 272.

5. Admitted position is that the complainant's daughter Neetu was married to the accused on 13.11.2013. Admittedly, she went to her parental home on 8.6.2014. On 21.06.2014, she went 'missing' and DD No.40A came into existence at Police Station Kalyanpuri. The complainant did not suspect the accused's involvement. On 24.06.2014, the instant FIR suspecting the accused to be involved in the crime was registered. Undoubtedly, entire case of the prosecution is based upon circumstantial evidence. In the response, the accused has disclosed that victim's body was recovered from an open place accessible to the public at large. The investigating agency did not place on record any video footage. The Call Detail Records have not been relied on.

6. Perusal of the impugned order reveals that it was passed after hearing the learned Additional Public Prosecutor for the State. The accused was in judicial custody since 24.06.2014. It was urged on behalf of the accused that the entire case of the prosecution was based on loose circumstantial evidence. There was no dispute between the accused and the deceased at any point of time. The victim had visited her parent's home few days prior to the incident and there was no scope for the accused to indulge in any sort of untoward activities. The CCTV footage of Metro Station and Noida were not made part of the final report. Considering all these contentions; facts and material on record and the custody period for more than fourteen months, the accused was admitted to bail imposing condition that he would not try to influence the witnesses or to adversely affect the trial otherwise.

7. I find no illegality or perversity in the impugned order. The discretion to grant bail has been exercised by the court below in a judicious manner. At the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case are required to be avoided. Of course, reasons for *prima facie* concluding why bail was being granted are required to be indicated.

8. In the instant case, the victim was accused's wife and their marriage took place on 13.11.2013. Nothing is on record to show if any time prior to the occurrence any complaint, whatsoever, was lodged against the accused or his family members for treating the victim with cruelty on account of dowry demands. The victim was at her parent's house on the day when she went missing. Initially, the complainant did not suspect the involvement of victim's husband. The entire case of the prosecution is based on circumstantial evidence. The accused remained in custody before grant of bail for about fourteen months. Upon completion of investigation, a charge-sheet had already been filed. The complainant did not apprehend any threat to the prosecution witnesses at the hands of the accused. Status report reveals that Neetu had kept Mobile Nos.9990543136 and 8376886845. Their call details have not been placed on record to ascertain her location on the relevant time. Response filed by the accused reveals that charge was yet to be framed. The trial is to take a long time. After the grant of bail, there are no allegations of its misuse in any manner. There was no apprehension of the accused to flee from justice.

9. Law in regard to grant or refusal of bail is well-settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. The nature of accusation and the severity of

punishment in case of conviction; the nature of supporting evidence, reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and *prima facie* satisfaction of the Court in support of the charge are the factors which are required to be taken into consideration before granting bail.

10. In the instant case, all these factors have been taken into consideration. The impugned order granting bail cannot be termed as unjustified, illegal or perverse.

11. The petition lacks in merits and is dismissed. All pending application(s) also stand disposed of.

12. Observations in the order would have no impact on merits of the case.

(S.P.GARG)
JUDGE

AUGUST 24, 2016
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