

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

Judgment delivered on : 23rd March 2016

+ BAIL APPLN. 2407/2015 & CrI.M.A. No.4184/2016
KAMLESH Petitioner
Through: Mr.Vijay Chandra Jha, Advocate.

versus

STATE (NCT OF DELHI) Respondent
Through: Ms. Manjeet Arya, Additional Public
Prosecutor for the State

+ BAIL APPLN. 2463/2015
GAURAV Petitioner
Through: Mr.Vijay Chandra Jha, Advocate.

versus

GOVT OF NCT DELHI Respondent
Through: Ms. Manjeet Arya, Additional Public
Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT

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P.S. TEJI, J.

1. The petitioners are mother and son and seek bail under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.) in FIR No.452/2015 under Section 302/201/34 of IPC, at Police Station Khajuri Khas, Delhi.

2. Since both the aforesaid petitions relate to a single incident and arise out of a common FIR, therefore the same are heard together and disposed of together.

3. The prosecution case as per charge sheet is that one Shri Ram was brought to GTB Hospital on 01.05.2015, where the doctors declared the patient being brought dead. DD No.27B was recorded and SI Kuldeep Singh investigated the dead body and found ligature mark on his neck. Father of the deceased was also present in hospital but due to old age, shock and illness he was not in a position to say anything. Crime Team was called to Mortuary, GTB Hospital and considering the MLC and facts of the case the offence was found under Section 302 IPC. Accordingly, the FIR was registered. Investigation started and statement of father of deceased was recorded who informed that on the date of incident i.e. 01.05.2015 at about 7.30 am, he saw Sanjay, son of his neighbor Lalman and after talking to him he went to his room situated on the roof of his house and his father Lalman came to his house and spoke slowly and called him at his house, where he informed the complainant that his son Shri Ram is ill and he is in his factory at Sherpur Chowk, Tukmirpur. It is further alleged that Lalman told the complainant that nobody should know that Shri Ram is ill, therefore he alone went to his son on the motorcycle of Sanjay. Upon reaching the factory and while entering into the factory, the complainant found that his son Shri Ram was lying straight just before the gate and was wearing only banyan and underwear on his body. He lifted the head of his son and there were no

activities and he was also not breathing. The complainant asked Kamlesh, who was working in the factory for many years to bring a glass of water, which she did and when the same was poured inside the mouth of Shri Ram it was observed that water was not going inside the mouth of his son, Meanwhile, Lalman brought a doctor who said that his son had died. It is further alleged that when he asked whether his son came only in banyan and underwear or was wearing pant shirt, Kamlesh told him that he came wearing pant shirt. Upon asking of the pant shirt, Kamlesh brought the same and gave them to him. TSR was brought by Lalman and the complainant, Lalman, Sanjay and Kamlesh sat with the dead body and when the complainant asked to take the body to GTB Hospital, Lalman told him that since Shri Ram has already died therefore, the same be taken to home only. It is further stated that after reaching home and laying the dead body of Shri Ram on the bed, some people noticed the mark on the neck of deceased and advised to take the deceased to GTB hospital. Deceased was taken to the hospital, where the doctor declared Shri Ram as brought dead. Lalman told the complainant not to call the police and to take him home but somehow police came. Thereafter, the statement of father of the deceased was recorded in which he raised doubt upon Sanjay and Kamlesh regarding killing his son Shri Ram.

4. Thereafter, investigation was conducted and during interrogation of Sanjay and Kamlesh, it was revealed that Sanjay and Kamlesh have developed illicit relations with each other and on the fateful night Shri Ram desired to sleep with Kamlesh, to which Sanjay

raised objection and told that she is only for him and he would not allow anyone else to touch her. In his statement, the accused Sanjay confessed that the offence was committed by him and accordingly he was arrested on 10.05.2015 and his disclosure statement was recorded. He also disclosed the incidence in which the Gaurav caught hold of the legs of the deceased and told Sanjay that he (deceased) wanted to abuse him and he also keep evil eye on his mother, so kill him, and the accused confessed that he himself took out a red color plastic rope and while taking it around the neck of Shri Ram (deceased) from left side, he pressed it and when the deceased was trying to catch the rope from his left hand, Kamlesh held his left hand by her elbow tightly and asked the accused to kill Shri Ram soon. Thereafter, Kamlesh checked his breath and confirmed the death of deceased.

5. On the aforesaid statement of accused - Sanjay, the other two accused persons Kamlesh and Gaurav were arrested on 11.05.2015 and on the basis of the evidence, both of them accepted their involvement in the death of Shri Ram. Purse of the deceased was got recovered from accused Kamlesh from inside the bed-quilt kept in the inside room. On police remand, plastic rope was recovered at the instance of accused Sanjay. Place of incident was identified by all the three accused.

6. Medical opinion was taken and the doctor conducting the post mortem and stated that the cause of death was asphyxia as a result of ante mortem ligature strangulation. It was opined that the Injury Nos.

2, 3, 4, 5, 6, 7, 8, 9, are produced by blunt force impact and the injury

No.1 is sufficient to cause death in ordinary course of nature and time since death was opined to be about one day. Exhibits were seized and sent for examination to FSL Rohini. On chemical, microscopic, TLC and GC-HS examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides could not be detected in the exhibits. The result of other exhibits is still awaited. On the basis of the aforesaid, the prosecution filed its charge sheet for the offence punishable under Section 302/201/34 of IPC against all the three accused persons.

7. Mr. Vijay Chandra Jha, learned counsel argued on behalf of both the petitioners and contended that the petitioners are arrested on the basis of statement of the main accused – Sanjay and they are in custody since the date of their arrest i.e., 11.05.2015. It is further contended that the prosecution has falsely implicated the petitioners in the present case on the basis of the concocted story of the accused – Sanjay and the fact is that the petitioner – Kamlesh is working in the factory of accused – Sanjay and she never subjected herself to the lustful demands of accused – Sanjay. It is further contended that the petitioners have not given any statement accepting their involvement in the death of the deceased. It is contended that the petitioners were made to sign the paper, which was said to be the recording of the statement of the petitioners by the police. Even the contents of the paper were not read over to petitioners.

8. Learned counsel for the petitioners further contended that the FSL report dated 17.07.2015 clearly indicated that no metallic

poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides were detected from the exhibits taken from the body of the deceased, therefore the prosecution story regarding the deceased was heavily drunk on the date of incidence is false. Lastly, it is contended that the investigation is complete, charge sheet is filed and the petitioners are not involved in any other case, therefore the petitioners ought to be granted bail in the present case.

9. Ms. Manjeet Arya, Additional Public Prosecutor for the State opposed the aforesaid contentions made on behalf of the petitioners. It is contended on behalf of the State that there is recovery of purse from the house of petitioner – Kamlesh and apart from this, there are many material witnesses who have deposed under Section 161 Cr.P.C. that the petitioner – Kamlesh had illicit relationship with the main accused Sanjay, which will be able to authenticate the prosecution story. The cause of death is also opined by the doctor conducting the post mortem to be of asphyxia as a result of ante mortem ligature strangulation. There is sufficient material against the petitioners, therefore, the petitioners ought not be granted bail in this case.

10. I have heard the submissions of learned counsel appearing on behalf of the petitioners as well as the submissions of learned Additional Public Prosecutor for the State and also gone through the material placed on record.

11. For careful scrutiny of the case, after going through the contents

of the petition as well as charge sheet and the deposition of the material witnesses before the Trial Court, this Court observes that the petitioners have been charged with the offence punishable under Section 302 of IPC. There is also recovery of deceased's purse containing I/card of the deceased and photocopies of election I card and Adhar Card of deceased from the room of petitioner – Kamlesh and the opinion of the doctor conducting the post mortem is that the cause of death was asphyxia as a result of ante mortem ligature strangulation.

12. In the status report filed on behalf of the State, it is specifically mentioned that as per the disclosure statements of the petitioners, Gaurav caught hold of both the legs of the deceased Shri Ram, when the deceased was being strangled by accused – Sanjay. It is also mentioned in status report that the Autopsy Surgeon opined “cause of death is asphyxia as a result of ante mortem ligature strangulation and all injuries are ante mortem in nature.” Learned Additional Public Prosecutor for the State further contended that the charge sheet has been filed and the case is pending trial at the stage of recording of prosecution evidence therefore, in the aforesaid facts and circumstances, the petitioners ought not be granted bail in the present case.

13. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* (2010) 14 SCC 496, the Hon'ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors:

9. ... among other circumstances, the factors [which are] to be borne in mind while considering 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 accusation;
- (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 influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

14. In light of the facts and circumstances of the present case, this Court is of the view that the allegations against the petitioners are very serious in nature, in which the petitioner-Gaurav's involvement is that he caught hold of the legs of the deceased and the petitioner – Kamlesh's involvement is that she held the left hand of the deceased by her elbow tightly and asked the main accused – Sanjay to kill Shri Ram soon. Recovery of purse containing I/card of the deceased and photocopies of election I card and Adhar Card of deceased from the room of petitioner – Kamlesh is also there; the cause of death, as

opined by the doctor, and the fact that the trial is at an initial stage and prosecution's material witnesses are yet to be examined, this Court is not inclined to grant bail to the petitioners – Kamlesh and Gaurav, at this stage.

15. In the light of the aforesaid, the bail applications filed by the petitioners are dismissed.

16. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioners. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

17. With aforesaid observations, the present bail applications stand disposed of.

P.S.TEJI, J

MARCH 23, 2016

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