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

+ **Bail Appln.55/2016**

RAHUL THAKUR

..... Petitioner

**Through: Mr.Sanjeev Sahay and Ms.Reema
Gujral, Advocates**

Versus

STATE OF NCT OF DELHI

..... Respondent

**Through: Mr.Akshai Malik, APP for the State
alongwith Insp.Arunendra Singh,
Police Station Shakarpur, Delhi.
Complainant in person.**

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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02.06.2016

1. Vide this application under Section 439 Cr.P.C, the petitioner seeks regular bail in case FIR No. 1159/15 under Section 498A/304B/302/306/506/34 IPC registered with police station Shakarpur, Delhi.

2. Prosecution case as revealed from the status report is that on 28.05.2015, on receiving DD No.38A, SI Vinod alongwith Constable Rajendra No.2301/E and Inspector Arunendra Singh reached the second floor of House No.S-9, Gali No.1, Sunder Block, Shakarpur, Delhi and found the dead bodies of one lady and her two kids on the double bed. The CATS ambulance also reached there, which declared them dead. The strangulation/ligature marks were visible around the neck of the female

body and a stool was found lying on the bed. One red-pink colour plastic rope was found hanging from the ceiling fan located above the double bed. There was froth in the mouth of the elder child. The fluids were seen coming out of the mouth of the younger child. The husband of the deceased lady namely Rahul Thakur son of Mr.Dhanraj Thakur resident of House No.S-9, Gali No.1, Sunder Block, Shakarpur, Delhi was present at the spot who stated that at about 10 pm when he knocked the door of his wife's room, it was found bolted from inside. When he did not hear any noise from inside, he sneaked inside from ventilation window and saw that his wife Neetu was hanging by neck with a plastic rope dangling from ceiling fan. He pushed open the door resulting in breaking of the kundi. He then untied the rope from the neck of his wife and put her body on the bed. At the footside of bed were lying the dead bodies of both her children namely Tanishk (5 years) and Ryan (2 years). The inspection and photos of scene of crime was got done by the Distt. Crime Team. Rahul Thakur informed his brother-in-law, who reached house No.S-9, Gali No.1, Sunder Block, Shakarpur, Delhi alongwith the family. On the statement of Narender Singh, brother of the deceased Neetu given before the Executive Magistrate, the aforesaid FIR was registered wherein he named as many as 17 persons to be responsible for the unfortunate incident.

3. Counsel for the petitioner submitted that the complainant who is the younger brother of the deceased Neetu out of vengeance have made defamatory allegations against the petitioner's sister-in-law and his cousin who is an orphan. Vague and omnibus allegations have been made by him against everyone in the family including his own wife and her family. The conduct of the complainant was found to be objectionable by learned Additional Sessions Judge in the bail order dated 10.07.2015 filed by one of the co-accused Deshraj. The said order was challenged by the

complainant by filing Crl.M.C.3106/2015, however, the same was withdrawn on 10.08.2015. Except for the petitioner and his brother Rajesh Thakur, all the other co-accused were granted anticipatory bail. Even Rajesh Thakur has been granted regular bail on 03.10.2015. Counsel further submits that the dying declaration made by the deceased does not make any allegation of dowry demand or cruelty related to dowry. The deceased was under extreme stress due to problems in her parents family as both her brothers' wives had filed police complaints. Her elder sister was also having some marital problem. Neetu used to spend a lot of time at her parents place. In fact, in 2012 Neetu had made DD entry no. 70-B dated 31.07.2012 at the police station stating that she is living happily with Rahul Thakur and has nothing to do with her brother and his family. This DD was made to safeguard against the possible criminal case being filed by complainant's wife Babita for dowry harassment. On the complaint made by the wife of elder brother of Neetu, the elder brother and her parents were arrested and remained incarcerated for several years. The younger brother of Neetu is also undergoing marital dispute with his wife Babita who has filed a complaint against the complainant and Neetu amongst others for her present situation. Neetu was highly suspicious by nature and would suspect petitioner with every woman. She suspected the petitioner to be having an affair with his sister-in-law. Full love and affection was showered upon the deceased after the marriage. Initially, the petitioner was staying at first floor of S-9, Gali No.1, Sunder Block, Shakarpur, Delhi alongwith his wife and two sons however on her request, the elder brother shifted to the first floor and petitioner alongwith his family shifted to second floor. The petitioner was taking care of Neetu and the children. All the expenses of the children were borne by petitioner. He was giving Rs.10,000 to Rs.15,000 per month to Neetu for expenses. In March, 2015 Neetu had taken a job in

Gurgaon in a call centre. She had night shift. She would come back in the morning and go off to her room. By the time petitioner would come back in the evening, Neetu would leave for her job. Hence the petitioner and his children were being taken care of by petitioner's mother and his sister-in-law. Counsel further submits that in the initial complaint made by the brother of the deceased there were no allegations of demand of dowry. After more than a month of the tragic incident, statement of mother of the deceased was recorded wherein she levelled allegations of demand of dowry. A questionnaire was sent to the mother of the deceased by the Investigating Officer of the case to give details about the payments as alleged in her statement but till date no reply has been given by her. It is submitted that the delay in giving the statement cast a doubt on the veracity of her statement. Furthermore, complainant in his statement alleged receiving/sending SMS to the deceased however he did not hand over his mobile phone to the Investigating Officer of the case by alleging that the same has been lost. It is further submitted that the petitioner has roots in the society. He is a professional and is working with a reputed company Rolta India Limited as a Group Technology Architect. Investigation is already complete as the chargesheet has been submitted. The petitioner is in custody for last more than one year. Trial is going to take a long time as so far even charge has not been framed. Under the circumstances, he be released on bail and he is ready to abide by any condition which may be imposed upon him.

4. Reliance has been placed on *Dilawar Singh vs. State of Delhi* (2007) 12 SCC 641; *Ganesh Bhawan Patel vs. State of Maharashtra* (1978) 4 SCC 371 and *Nitin Kumar vs. State* Bail Application No.437/2015 dated 06.04.2015.

5. Application is opposed by learned Additional Public Prosecutor for the State who submits that in the incident which took place on the fateful day three persons have lost their life. Learned Additional Public Prosecutor further submitted that the State has not to go completely by the statement made by the complainant who has made allegations against as many as 17 persons in the FIR including his own wife and her family members with whom his relations were strained. After investigation no role was found against 15 persons. The chargesheet has been filed against the petitioner and his brother. It is further submitted that the statement of the mother could not be recorded for one month after the incident as she was not found at the given address. Charge is yet to be framed. Under the circumstances, keeping in view the gravity of the offence, the petitioner is not entitled to be released on bail.

6. The law regarding grant/refusal of bail is well settled. It will be advantageous to refer to the observations made by Hon'ble Supreme Court in the latest pronouncement in ***Dr. Vinod Bhandari vs. State of M.P*** 2015 II AD (S.C.) 245 where it was held by Hon'ble Supreme Court as under:-

*"12. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. Reference may be made to decisions of this Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan*** : (2005) 2 SCC 42, ***State of U.P. v. Amarmani Tripathi*** : (2005) 8 SCC 21, ***State of Kerala v. Raneef*** : (2011) 1 SCC 784 and ***Sanjay Chandra v. CBI***: (2012) 1 SCC 40.*

13. In ***Kalyan Chandra Sarkar*** (supra), it was observed:

“8. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing require that such persons be released on bail, in spite of his earlier applications being rejected, the courts can do so.

14. In **Amarmani Tripathi** (supra), it was observed:

*“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*: (2001) 4 SCC 280] and *Gurcharan Singh v. State* (Delhi Admn.): (1978) 1 SCC 118. 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* : (2004) 7 SCC 528: (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* : (2002) 3 SCC 598 and *Puran v. Rambilas*: (2001) 6 SCC 338.)

22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a *prima facie* case is necessary. An examination of the material in this case, set out above, keeping in view the aforesaid principles, disclose *prima facie*, the existence of a conspiracy to which Amarmani and Madhumani were parties. The contentions of the Respondents that the confessional statement of Rohit Chaturvedi is inadmissible in evidence and that should be excluded from consideration, for the purpose of bail is untenable. This Court had negated a somewhat similar contention in *Kalyan Chandra Sarkar* thus: (SCC p. 538, para 19)

19. The next argument of learned Counsel for the Respondent is that *prima facie* the prosecution has failed to produce any material to implicate the Respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the Respondent with the crime is an alleged confession of the co-accused which according to the learned Counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a *prima facie* case against the Respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial.

15. In **Raneef** (supra), it was observed:

15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article [21](#) of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the Respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille.

16. In **Sanjay Chandra** (supra), it was observed:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable

amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

24. *In the instant case, we have already noticed that the “pointing finger of accusation” against the Appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the Appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating the scales of justice.”*

7. In the light of the above settled principles of law to deal with the prayer for bail pending trial, the present application is to be considered. Needless to say, a very tragic event has taken place in which the deceased has died by strangulation and the life of two minor children was also taken however perusal of record reveals that after the police was informed about the incident, police officials reached the spot and found two writings in the room. On the left side of the wall it was written: *“I loved you Rahul, But you never loved me. Mujh se aur bardasht nahi hota, So I quit, I will miss you Rahul”*. On the right side of the wall it was written: *“I am dying because of Shailja Singh, Rajesh Thakur, Babita Singh (D/o Vijay Singh), Pappu alias Deshraj (Babita’s cousin). Meri family ko please zaleel mat karna, Rahul please”*.

8. The aforesaid two writings does not make any allegation of demand of dowry or harassment to the deceased either by the petitioner or any of his family

members. In the complaint made by the brother of the deceased which resulted in registration of the FIR also, there are no allegations of demand of dowry and in fact it is alleged that the deceased found the petitioner in objectionable condition with his sister-in-law Shailja Singh and the brother of the petitioner Rajesh Thakur was having illicit relations with Puja, an orphan who was residing in their house. It is alleged that when the deceased informed about the objectionable relations between the petitioner and his sister-in-law then she was given beatings by Rahul and the whole family also threatened her with dire consequences. However, on 26.06.2015 statement of mother of the deceased Savitri Devi was recorded wherein she levelled allegations of demand of dowry on different occasions and has given a narration as to how the demands were fulfilled. In order to investigate the matter, notice under Section 91 Cr.P.C was served upon Savitri Devi seeking information as to how the demands were fulfilled however it is stated that no reply has been given to this notice by Savitri Devi. In ***Ganesh Bhawan Patel*** (supra) delay in recording the statement by few hours of material witness by the Investigating Officer was commented upon by observing that the same may not by itself amount to a serious infirmity in the prosecution case but it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately gaining time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. In the instant case, statement of mother of deceased was recorded after more than a month although, according to counsel for petitioner she was very much available in Delhi on the very next day of the incident.

9. Furthermore, the complainant has named as many as 17 persons in his statement made before the Investigating Officer of the case which includes not only the family members of the petitioner but also his own wife and her family members as well as the friends of co-accused Rajesh Thakur. However, on investigation it was found that there is no cogent material against those persons

except the petitioner and his brother. It is an admitted position that chargesheet has already been filed. Most of the witnesses are the family members. Some independent persons of the locality namely Mrs.Arti Aggarwal, Ms.Sangeeta Gupta, Mr.Raju Prasad Gupta, Mr.Gaya Prasad Shukla and Mr.Sanjeet Kumar alias Bittoo have been examined who have given the statement in favour of the petitioner and his family members. That being so, there is no possibility of petitioner approaching them or tampering with the evidence. The petitioner has roots in society as he is a professional and working with a company Rolta India Limited as a Group Technology Architect. He is in custody for last more than one year. He does not have any previous criminal antecedents. There is no material on record to show that the petitioner will misuse the liberty granted to him to subvert the justice.

10. Considering the overall facts and circumstances and without expressing any opinion on merits, the application is allowed. It is directed that the petitioner be released on bail subject to following conditions:

- (i) Petitioner shall furnish a personal bond in the sum of Rs.50,000/- with two sureties in like amount to the satisfaction of the learned Trial Court;
- (ii) He shall appear before the learned Trial Court where the matter is fixed and shall not dispute his identity;
- (iii) He shall surrender his passport before the learned Trial Court and shall not leave the country without prior permission of the Court. In case he is not having any passport then an affidavit to this effect be filed.
- (iv) He is directed to furnish his address and contact number to the SHO concerned as well as to the Trial Court and change of address, if any, during the trial of the case;

It is clarified that nothing stated herein shall tantamount to an expression of opinion on merits of the case and any observations made in this order is confined to the disposal of the application.

The application is accordingly disposed of.
Order dasti.

SUNITA GUPTA, J

JUNE 02, 2016
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