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

+ **BAIL APPLN. 423/2017**

Judgment reserved on : 15th September, 2017
Judgment pronounced on : 12th October, 2017

NITIKA GUPTA

.....Petitioner

Through: Mr. Sunil K. Mittal, Mr. Vipin K. Mittal,
Mr. Anshul Mittal, Ms. Vaishali Mittal,
Ms. Aanchal Mittal and Mr. Sushant Bali,
Advocates.

Versus

STATE

....Respondent

Through: Mr. Mukesh Kumar, APP for the State
with Inspector Kehar, V Batalian and
ASI Badlu Ram from P.S Janak Puri.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') the petitioner seeks **grant of regular bail** in FIR No. 392/2016 under Sections 302/201 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), registered at P.S Janak Puri, Delhi. The petitioner is stated to be in judicial custody since 28.04.2016. Status report is on record.
2. Brief facts of the present case are that on 17.04.2016, a DD No.4-A at P.S Janak Puri was registered to the effect that an information was received from Mata Chanan Devi Hospital that patient Manish Gupta/deceased is brought dead by his wife Nitika

Gupta/petitioner. Thereafter, statement of the complainant Satya Dev Gupta/ father of the deceased was recorded wherein he stated that he is suspicious that his son Manish Gupta had been murdered by the petitioner and requested post-mortem of his son to be done by a Medical Board constituting three independent doctors from different government hospitals with videography.

3. Case was registered under Section 302 IPC, petitioner was arrested and after completion of the investigation charge sheet was filed under Section 302/201 IPC before the court of Additional Sessions Judge (hereinafter referred to as 'ASJ'). The petitioner has previously filed three applications for seeking bail, however the same have been dismissed vide orders dated 20.08.2016, 29.09.2016 and 08.02.2017, respectively.
4. Learned counsel for the petitioner contended that a bare perusal of the FIR shows that no specific allegations have been levelled against the petitioner except vague allegations that there were disputes between the petitioner and her husband/deceased; that the present complaint has been lodged by the complainant with an oblique motive to oust the petitioner and her daughter from the share of the deceased's properties; that no motive has been attributed upon the petitioner nor has any circumstance been even suggested against her in the FIR; that the entire allegations are vague without there being any corroborative evidence, direct or indirect, against the petitioner; that the accused was a strongly built man of over 6 ft. and weighed more than 100 kg whereas the petitioner is a skinny female of over 40 years of age and hence it is

highly improbable that the petitioner could have over powered her husband who was tall and well built; that the death occurred on the intervening night of 16/17.04.2016 whereas the FIR was registered on 27.04.2016 after due deliberations and manipulation by the police; that the statements of the witnesses under Section 161 Cr.P.C. recorded by the I.O on 28.04.2016 are a result of manipulations by the police in connivance with the complainant; that the death of the deceased was suicidal since the deceased was under tremendous stress and tension due to constant threats by his father of disowning him and not giving him his share in the sale of HUF properties; that the complainant for his own oblique motives sought the constitution of the Medical Board for conducting the Post-Mortem to gain time so that a favourable report could be made; that the observations and findings of the Post-Mortem report are also inconsistent with the MLC report so far as the observation of external injuries is concerned as the Post-Mortem report gives an over-blown description of the injuries with a view to prejudice the judicial mind; that the opinion of the doctors that the death in the present case could be homicidal as the circle of ligature around the neck is complete is vague and inconsistent with the Post-Mortem in as much as the Video Recording of the Post-mortem clearly shows that the ligature mark is not complete and that it was a case of suicidal hanging and not strangulation; that petitioner was arrested on 28.04.2016 and she is in judicial custody for last more than 15 months; that the entire case is based upon the statement of the complainant whose examination-in-chief has already been

recorded and there is no chance of petitioner tampering with any evidence; and therefore in the aforementioned circumstances the petitioner be released on bail.

5. In support of his contentions, learned counsel for the petitioner has relied upon the judgements in *Meharaj Singh (L/Nk) vs. State of U.P.* reported in (1994) 5 SCC 188, *H.B. Chaturvedi vs. CBI* reported in 2010 (3) JCC 2109, *Nnajappa vs. Union of India* reported in (2007) 4 SCC 350 and *Suresh Kalmadi & Anr vs. CBI* reported in 187 (2012) DLT 575.
6. Per contra, Mr. Mukesh Kumar, learned APP appearing for the State opposed the bail application and submitted that the petitioner has been charged with a serious and grave offence that is punishable with death or imprisonment for life; that the petitioner was actively involved in the commission of the alleged offence as at the time of incident only the petitioner was present in the house alongwith her minor daughter; that as per the post mortem report the 18 injuries found on the body of the deceased were ante mortem in nature and fresh in duration and the death of the deceased was caused due to asphyxia on account of homicidal ligature strangulation; that there is every possibility of petitioner tampering with the prosecution witnesses and hence, the present bail application be dismissed.
7. I have heard the learned counsel for the parties and perused the material available on record.
8. At this stage, this Court is not required to go into the merits of the allegations but rather take into consideration the overall

circumstances of the case. In the present case it is alleged that the cause of the death of the deceased is not suicidal but is due to murder committed by the petitioner through strangulation by a nylon rope. Charge has been framed under Section 302/201 IPC against the petitioner vide order dated 09.01.2017.

9. As per the post mortem report there were 18 injuries on the body of the deceased and *"all the injuries are ante mortem in nature and fresh in duration"*. Even otherwise the Medical Board has opined that the death of the deceased was *"due to Asphyxia caused by constricting force round the neck as a result of homicidal ligature strangulation"*.
10. Though all injuries had not been mentioned in the MLC however the injury of *"ligature mark focus over the neck"* stated in the MLC and corresponding injury No.1 of the post-mortem report is sufficient to point towards the cause of death of Manish Gupta. The Post-Mortem report and the MLC cannot be observed as mutually contradictory documents for the reason that the injuries noted in the Post- Mortem report which include minor abrasions besides the ligature mark are very superficial in nature that can be distinctively seen with the passage of time upon minuscule examination.
11. From a perusal of record it is evident that none was present at the house/the place of incident except the petitioner/ Nitika Gupta, deceased/Manish Gupta and their minor daughter/Mishti Gupta. All the witnesses so far examined have deposed on the same lines that except the above named three persons they have not seen anybody in the house at the time of the incident.

12. In *Trimukh Maroti Kirkan Vs. State of Maharashtra* reported in (2006) 10 SCC681 the Supreme Court has held that when an offence takes place inside the privacy of the house and the assailants have ample opportunity to plan and commit the offence, it would be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused. Relevant paragraphs of the judgment reads as under:

*“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC315 quoted with approval by Arijit Pasayat, J. In *State of Punjab vs. Karnail Singh* (2003) 11 SCC271. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads: (b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him.”*

Therefore in the present case, as only the petitioner was present at the place of incident alongwith her minor daughter, the onus would lie upon her to disprove the allegations levelled against her in the complaint. It is true that it is a case of circumstantial evidence. However, there are several features of the case, as apparent from the records, which prima facie appear to go against the petitioner for the purposes of the present petition. The evidence led by the prosecution clearly connects the petitioner with the offence.

13. It is pertinent to note here that most of the contentions raised on behalf of the petitioner are triable issues which cannot be determined at this stage by this Court. The authorities cited at bar by the counsel for the petitioner are not applicable to the facts and circumstances of the present case.
14. Therefore in light of the above and after careful scrutiny of other aforesaid facts and circumstances of the present case and other factors including severity of the punishment prescribed in law, I find no sufficient ground to grant bail to the petitioner. Hence, the present bail application filed by the petitioner is dismissed.
15. Before parting with the above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.

SANGITA DHINGRA SEHGAL, J

OCTOBER 12 , 2017//gr