

\$~7

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: September 21, 2017

+

BAIL APPLN. 1906/2017

NIRVASHI @ CEATHI

..... Petitioner

Through: Ms.Richa Dhawan & Mr.Anuj
Chaturvedi, Advocates

versus

STATE

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State with Inspector
Ram Chander, SHO,
PS Binda Pur

PRATIBHA RANI, J. (Oral)

CRL.M.A.15817/2017

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

BAIL APPLN.1906/2017

1. By way of this bail application filed under Section 439 Cr.P.C. read with Section 482 Cr.P.C, the petitioner is seeking regular bail in FIR No.1669/2015, registered under Sections 302/201/34 IPC, at PS Bindapur.
2. Notice. Learned APP as above accepts notice on behalf of the State and submits the status report.

3. Learned counsel for the petitioner has submitted that the petitioner Nirvashi Singh @ Ceathi is a woman who was arrested on 13th December, 2015 and is in judicial custody since 14th December, 2015.

4. While referring to the contents of the FIR which was recorded on the statement of Meetu Nanda who accompanied the deceased Pooja to the house of the petitioner Ceathi to have drugs, it has been contended that even the complainant has expired. Now there is absolutely no evidence against the petitioner to connect her with the alleged murder of Pooja.

5. Learned counsel for the petitioner has also submitted that even as per FIR, the petitioner was not present when, as alleged in the FIR, the husband of the petitioner Uche Chukwu @ Kalu and his two associates Annu & Kannu tried to force themselves on the complainant Meetu Nanda and the deceased Pooja. The complainant Meetu Nanda and the deceased Pooja were given injections forcibly which had the effect of sedating them. The deceased Pooja was given another injection as the first injection did not have the desired effect on her. In the morning, she was found dead at the house of the petitioner Ceathi.

6. Learned counsel for the petitioner has submitted that neither the petitioner had given injection nor in the CCTV footage she has been seen to be present and involved in disposing of the body of the deceased Pooja. The petitioner has a minor child to take care and she being foreign national is not even familiar with the local language, hence she may be enlarged on bail.

7. Somewhat identical submissions were made on behalf of the petitioner before the learned Trial Court and have been rejected for the reasons given here under:

“During the course or arguments, counsel for the accused submits that applicants/accused has been falsely implicated in the present case and she is in J/C since 13.12.2015. It is further submitted that there is no role of the present accused has been attributed by the Prosecution in the commission of crime, even there is no evidence on record to suggest that present applicant/accused was aiding or abetting the said the crime along with accused persons.

It is further submitted that there is only one eye-witness Meetu Nanda of the alleged incident who has also died, therefore, there is no material on record to connect the present applicant/accused with the crime. It is further submitted that even no blood sample been taken from the present applicant/accused, which is awaited from the FSL. It is further submitted that now there is only one public witness namely Baljinder @ Veeru left to be examined who is in judicial custody and if the present applicant/accused is released on bail, then there is no threat to the said witness also. It is further submitted that since there is no evidence on record to suggest that the applicant/accused was involved in the commission of crime, therefore, the accused may be released on bail.

xxxxxxxxxxxxxxxxxx

I have carefully gone through the arguments advanced by counsel for the accused and Learned Addl.P.P. for the State and perused the record carefully.

On perusal of the case file, I find that prosecution has alleged that on 12.10.2015 at about 7 a.m. at house

no. RZ-33, Fourth floor, Subhash Park, Uttam Nagar, New Delhi, all the accused persons in furtherance of their common intentions committed murder of one Pooja.

In view of the seriousness of the allegations and gravity of offences, and the fact that public witness, including the other witnesses, are yet to be examined, I am not inclined to grant bail to the applicant/accused, therefore, the bail application is dismissed. Copy of this order be given Dasti and copy be also sent to the applicant/accused through Supdt. Jail.”

8. It is relevant to mention here that even before the learned Trial Court, State has submitted that the case is also based on circumstantial evidence involving all the accused persons including the petitioner Ceathi and bail was opposed also on the grounds that the nature of offence is grave.

9. In the decision reported as ***State of U.P. through CBI vs. Amarmani Tripathi*** with ***State of U.P. through CBI vs. Madhumani Tripathi*** (2005) 8 SCC 21, the State sought cancellation of bail of the respondent/accused. While cancelling the bail of the respondent/accused, the Apex Court reiterated the principles governing the exercise of discretion while considering the application for release on bail as under:

“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 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 vs. NCT, Delhi* 2001 (4) SCC 280 and *Gurcharan Singh vs. State (Delhi Administration)* AIR 1978 SC 179). While a vague allegation that 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 vs. Rajesh Ranjan*, 2004 (7) SCC 528:

"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 vs. Sudarshan Singh, 2002 (3) SCC 598 and Puran vs. Ram Bilas 2001 (6) SCC 338."

10. The effect of death of the complainant Meetu Nanda has to be dealt with by the learned Trial Court at an appropriate stage. This itself cannot be a ground to enlarge the petitioner on bail. In the FIR there are specific allegations against the petitioner which can be summarised as under:

(i) The complainant Meetu Nanda @ Alisha along with the deceased Pooja visited the house of the petitioner Ceathi at H.No.RZ-33, Subhash Park Extn., Raja Puri, Uttam Nagar, Delhi to have drugs as they were frequent visitor to the house of the petitioner for the aforesaid purpose.

(ii) Her husband was also well known to the complainant and the deceased and they used to call him Papa who was also present there.

(iii) After taking the drugs from the petitioner and her husband both, the complainant Meetu Nanda and the deceased Pooja slept in a room in their house and at about 7:00 AM (next day) two other boys namely Annu and Kannu, who were also frequent visitor to the house of the petitioner and well known to the complainant and the deceased, were found present. After some time the husband of the petitioner as well those two boys tried to force themselves on both of them and the complainant threatened to call the police.

(iv) Thereafter they were administered injections and they became unconscious.

(v) In the evening at about 5:00-6:00 PM when the complainant woke up she found Pooja to be still unconscious and requested the petitioner and her husband to take her to the hospital but they asked her to keep quite.

(vi) One Veeru came there and after seeing Pooja, Veeru informed that Pooja had died. Veeru helped by giving her ₹5,000 to arrange for ambulance and dropped her near Aushman Hospital, Dwarka.

(vii) After some time the petitioner Ceathi came there in an auto and on the pretext that her husband had gone to arrange for 4-5 persons to take Pooja down from the house, the petitioner took the complainant in the same auto to some other house in Uttam Nagar where her husband and two-three other persons were present. They were talking in their own language from which she could infer that they were planning to dispose of the body of the deceased Pooja and thereafter she escaped. After visiting the house of the petitioner she found the said house locked. She informed the PCR.

(viii) The body of the deceased Pooja was recovered from near Ganda Nala, Madhu Vihar which was identified by the complainant.

11. The above contents of the FIR highlight the role of the petitioner Ceathi right from the stage the complainant Meetu Nanda along with the deceased Pooja entered her house, till the stage of disposal of the dead body of Pooja.

12. Merely because in the CCTV footage the petitioner is not seen along with other accused persons and disposing of the body of Pooja,

in itself is no ground to release the petitioner on bail.

13. In view of the nature and gravity of the offence and the role attributed to the petitioner, I do not consider it to be a fit case to enlarge the petitioner on bail.

14. The petition is dismissed.

PRATIBHA RANI, J.

SEPTEMBER 21, 2017

'hkaur'

