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

+ BAIL APPLN. 2118/2017

NEERAJ

..... Petitioner

Through: Mr.R.K.Tarun, Advocate

versus

STATE

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with Insp.Rajinder Khatri, PS
Model Town

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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25.10.2017

CrI.M.A.17256/2017

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

Bail Appln. No.2118/2017

1. This application has been filed by the petitioner under Section 439 Cr.P.C., seeking regular bail in case FIR No.515/2014, registered under Section 302/323/341/34 IPC, at PS Model Town.
2. Notice. Learned APP as above accepts notice on behalf of the State.
3. Learned counsel for the petitioner has submitted that the petitioner is in custody in this case for more than three years, all the material witnesses have been examined in this case and the star witness PW-4 Gulfam has not supported the case of the prosecution and was declared hostile.

4. Learned counsel for the petitioner further submitted that in case of conviction the petitioner can be sent to jail to undergo sentence but when the Trial Court has observed that the trial is at the fag end, the petitioner may be released on bail till the trial is concluded.

5. Vide order dated 6th June, 2017 the learned Trial Court has noted the submission on behalf of the State that PW-2 Dildar, PW-4 Gulfam and PW-5 Naseem specified the role of the petitioner/accused Neeraj as well. Learned Trial Court also noted that the application of the petitioner for bail had earlier also been dismissed on 28th May, 2015, 1st October, 2015 and 30th November, 2016 and this is the fourth bail application. While noting that the evidence cannot be appreciated in parts and the trial is at the fag end, the prayer of the petitioner to seek bail was declined.

6. The principles governing exercise of discretion while considering the application for bail in a heinous crime were laid down by the Supreme Court in **Ram Govind Upadhyay vs. Sudarshan Singh and Ors.** (2002) 3 SCC 598 as under:

“3. Grant of bail though being a discretionary order – but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail – more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. *Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture though however, the same are only illustrative and non exhaustive neither there can be any. The considerations being:*

(a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

7. When the case of the petitioner is examined in the light of above principles, merely because the material witness PW-4 Gulfam has been cross examined by the learned APP for the State, in itself is not a ground to release the petitioner on bail. Learned Trial Court has rightly observed that evidence cannot be appreciated in parts.

8. It is a case where trial has also proceeded at a fast pace and likely to be concluded shortly.

9. Taking into consideration the nature and gravity of the offence, the bail application is dismissed.

PRATIBHA RANI, J.

OCTOBER 25, 2017/ 'hkaur'