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

+ BAIL APPLN. 2319/2017

PRASHANT

..... Petitioner

Through: Mr.Chetan Lokur, Advocate

versus

STATE

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with SI Bhagat Singh, PS Ashok
Vihar

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **15.11.2017**

CRL.M.A.18670/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

BAIL APPLN. 2319/2017

1. By way of this application filed under Section 439 read with Section 482 Cr.P.C., the petitioner, Prashant is seeking regular bail in case FIR No. 319/2009, under Sections 498-A/302/34 IPC, registered at PS Ashok Vihar, Delhi on the statement of deceased Suman recorded before the Executive Magistrate on the following grounds:-

(i) The petitioner is in custody since 7th July, 2009 and has no criminal antecedents.

(ii) He has been falsely implicated in this case at the instance of family of his deceased wife.

Trial has not been concluded till date and charge against co-accused has been amended at the final stage.

2. Notice. Mr.Kewal Singh Ahuja, APP for the State accepts notice of this application and furnishes the status report.

3. Mr. Chetan Lokur, learned counsel for the petitioner submits that petitioner is in custody for more than 8 years and he cannot be blamed for this delay in conclusion of the trial. Learned counsel for the petitioner has also drawn the attention of this Court to the proceedings dated 8th June, 2017 on which date charge framed against the co-accused Babita has been amended and the prayer of the petitioner for separate trial from Babita has been declined. Learned counsel for the petitioner has also submitted that the co-accused Babita is on bail, on parity, the petitioner may be released on bail especially in view of the period he has already spent in custody.

4. Learned APP for the State has submitted that the trial is at the fag end and that in view of the role attributed to the petitioner prayer for bail may be rejected.

5. Perusal of the copy of the order sheet dated 25th July, 2017 in Case FIR No.319/09 placed on record by the petitioner show that on that date his bail application was dismissed by the learned ASJ on the ground of serious nature of the offence and that the matter qua him is on the verge of disposal. The last proceedings dated 22nd August, 2017 of the learned Trial Court placed on record reads as under:-

“22.08.2017

2.30 pm

Present: Sh.P.K.Samadhiya, Ld.Addl. PP for the State

*Accused Prashant in JC, Hawaldar Mehto and Seema on bail
with Sh.Praveen Kumar, Advocate*

The matter has been taken up in post lunch session as Sh.Samadhiya was on leave in the first half. He seeks time to search and submit the relevant case laws as he inadvertently could not look into the copies of judgments submitted by defence.

Put up on 01.09.2017 for final submissions and case laws.

Sd/-

*Addl.Sessions Judge-04 (North-West)
Rohini Courts/22.08.2017”*

6. The contents of case FIR No.319/2009 reveals that the same has been registered on the statement of Suman, wife of the petitioner, Prashant before her death. In the said FIR, the deceased apart from making allegations against her husband of having illicit relationship with her jethani (co-accused Babita), she had narrated the incident and the manner in which she was set on fire by her husband (petitioner). She had stated that on that date in the morning apart from her, her husband and her jethani were present at home. When she was in the kitchen and heating the tea at that time her husband came holding a can of kerosene oil in his hand and poured it on her and set her on fire lighting the match-stick. She tried to save herself by pouring a bucket of water on herself. Thereafter, she was removed to the hospital by her husband and jethani.

7. In ***Kalyan Chandra Sarkar vs. Rajesn Ranjan @ Pappu Yadav and Anr.*** AIR 2004 SC 1866, the Supreme Court laid down the law with regard to grant or refusal of bail, as under:-

“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 of 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 and Ors. 2002CriLJ1849 and Puran v. Rambilas and Anr. 2001CriLJ2566 .

8. The Hon'ble Supreme Court while discussing the issue of long period of incarceration in jail in ***Pramod Kumar Saxena Vs. Union of India(UOI) and Ors.***, JT 2008 (10) SC 195 has held as under:-

“16.mere long period of incarceration in jail would not be per se illegal. If the petitioner has committed offences, he has to remain behind bars. Such detention in jail even as an under-trial prisoner would not be violative of Article 21 of the Constitution. If the petitioner has committed non-bailable offences and in connection with those offences he is in jail, the custody can never be said to be unlawful or contrary to law and he is not entitled to be enlarged on bail.”

9. Taking into consideration that in the instant case there is the dying declaration as per which the petitioner, who is the husband, has allegedly poured kerosene oil on his wife when she was in the kitchen and set her on fire, make the nature of the offence so serious that long incarceration during trial of this case is not sufficient to release him on bail.

10. The bail application is devoid of any merit and the same is hereby dismissed.

11. Any observations made hereinabove shall not be construed as opinion on the merits of the case at any stage of the trial.

PRATIBHA RANI, J.

NOVEMBER 15, 2017/‘pg’