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

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Judgment delivered on: 17.07.2018

+ BAIL APPLN.461/2018

ASHA RANI

..... Petitioner

versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner :

Mr.Tripurari Ray, Mr. B.S.Billowria
and Mr.Praveen Kumar, Advs.

For the Respondent:

Mr.Raghuvinder Verma, APP for
State with SI Amrish Giri, P.S.Narcotics.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

17.07.2018

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks regular bail in FIR No.301 of 2017 under Section 420/120B of the IPC at Police Station Paharganj.
2. Allegations in the FIR are that the complainant wanted to obtain a Visa for Canada and accordingly approached the petitioner, who represented that she would be in a position to obtain a Visa for her.
3. It is submitted that substantial amount of money was paid to her. She along with other co-accused handed over the passport with the Visa and a ticket to the complainant. Subsequently the ticket was cancelled and it was

represented to the complainant that the ticket has been cancelled as she would be travelling via a different route. This happened twice over and the tickets that were issued were subsequently cancelled. It is contended that when the complainant wanted refund of his money, the same was refused and the petitioner switched off her phone. It is contended that the complainant paid approximately Rs. 22 lakhs for obtaining the Visa.

4. Learned counsel for the petitioner submits that the petitioner has been falsely implicated and there is no evidence to connect the petitioner with the subject offence. He further submits that all the other co-accused have already been admitted to bail.

5. Petitioner has been in custody since 01.10.2017.

6. Learned APP opposes the grant of bail and submits that petitioner has been involved in not only the subject FIR but there were six other cases in which the petitioner was involved of similar nature. He further submits that the allegation is that a sum of Rs.22 lakhs was paid to the petitioner out of which about Rs.7.5 lakhs was paid directly into the account of the petitioner.

7. Learned counsel for the petitioner submits that out of six cases in which the petitioner is alleged to have been involved, she has been acquitted in two and in so far as the deposit of Rs.7.5 lakhs into her account is concerned, it is disputed that the same was deposited by the complainant. It is contended that the said amount was deposited by one Mr. Sahil with whom there was commercial transaction and subsequently the amount was withdrawn by Sahil. He, however, submits that without prejudice the

petitioner would be willing to secure the said amount of Rs.7.5 lakhs by creating a charge on an unencumbered property.

8. Learned counsel for the petitioner further submits that on the principles laid down by proviso to Section 437(1), the petitioner being a lady is entitled to be enlarged on bail. He submits that proviso to Section 437(1) mandates taking of a liberal view even in offences which are much graver in nature than the subject offence for which the petitioner has been charged.

9. Learned counsel submits that the petitioner has a daughter aged about 12 years and there is no other family member to take care of her.

10. Section 437(1) reads as under:-

“(1) When any person accused of, or suspected of, the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non- bailable and cognizable offence:

Provided that the Court may direct that a person referred to

in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further -----”

11. Clauses (i) & (ii) of Section 437(1) of the Cr.P.C empowers the court to refuse grant of bail, if the Court is of the view that there appears to be reasonable ground for believing that the accused is guilty of an offence for which the punishment prescribed is death or imprisonment for life. Further, if the accused has been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more or had previously been convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years, the Court would be justified in refusing to grant bail.

12. Proviso to the Section 437 (1) provides that even in cases covered by clauses (i) and (ii) the Court may direct release of the accused on bail if such person is under an age of sixteen years or is a woman or is sick or infirm.

13. When the rigors of Section 437(1) are softened down by the first proviso for a certain category of accused, in my view the same relaxation would be available in favour of a woman who is charged for an offence for which punishment prescribed is lesser (seven years in this case) and admittedly there is no conviction of the petitioner of a previous offence.

14. Without commenting on the merits of the case, keeping in view the

totality of the facts and circumstances and on perusal of the record and also keeping in view the plea that petitioner has a daughter aged 12 years, I am of the view that petitioner is entitled to be enlarged on bail subject to the condition that petitioner furnishes a security to the satisfaction of the Trial Court of an unencumbered immovable property of a value not less than Rs.7.5 lakhs.

15. On furnishing of a security as referred to above and furnishing a personal bond in the sum of Rs.25,000/- with two sureties of the like amount, petitioner be released on bail, if not required in any other case. The petitioner shall appear before the Trial Court whenever the matter is listed. Petitioner shall also report to the local police station of the permanent residence of the petitioner on first Saturday of every alternate month. Petitioner shall not do anything which may prejudice the trial or the prosecution witnesses. Petitioner shall not leave the country without the permission of the Trial Court.

16. Petition is disposed of in the above terms.

17. Order *Dasti* under the signature of the Court Master.

SANJEEV SACHDEVA, J

JULY 17, 2018

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