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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1625/2016**

STATE NCT OF DELHI

..... Petitioner

Through: Mr. K.S. Ahuja, APP for the State.

versus

RAJBIR YADAV & ORS

..... Respondents

Through: Mr. Manjit Singh Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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22.11.2018

The first information report (FIR) No. 14/2014 was registered in police station Sagarpur on 13.01.2014 on the complaint of Neha Yadav, daughter-in-law of third respondent Sumitra Yadav, allegations having been made against her and against other respondents, they being elder son and another daughter-in-law of Sumitra Yadav for offence under Section 307/34 IPC. It appears from the case for the prosecution that Neha Yadav had been set on fire allegedly by the respondents. While the case was still at the stage of investigation, the respondents and two others one of them stated to be Shubham – a juvenile, were arrested but released on bail by this Court, by order dated 21.02.2014. The victim Neha Yadav subsequently died on 02.07.2014 statedly in the consequence of the burnt injuries suffered in the incident that was subject matter of the afore-mentioned case. In the wake of such event, the investigating agency added the offence under Section 302 IPC.

The investigating officer re-arrested the respondents and produced them before the Metropolitan Magistrate seeking judicial remand but by order dated 03.07.2014, the said request was declined on the ground that the conditions of the bail order granted earlier had not been violated and that the post-mortem report not been furnished. The matter was taken to revisional court, which by its order dated 19.09.2014, set aside the order of the Metropolitan Magistrate and directed reconsideration.

Against the above backdrop, the respondents applied for anticipatory bail, such request not having been granted by the court of sessions. Eventually, a bail application (no. 2261/2014) of co-accused Abhay Yadav came up before this Court and, in that context, interim protection was granted by order that 15.10.2014. Meanwhile, the respondents had come to be arrested on 12.10.2014 and on 13.10.2014 and sent to judicial custody. They then applied for release on regular bail, their prayer to this effect having been granted by the court of sessions, by its order dated 18.10.2014.

The State challenged the said order dated 18.10.2014 before the same Court by application under Section 439 (2) Cr.P.C. The Sessions court by its order dated 20.07.2015 was of the view that since the order on bail was being challenged on merits, such petition should have been moved before the superior court and, thus, declined to modify, holding that the application was not maintainable.

Against the above backdrop, the present petition has been filed by the State seeking cancellation of bail invoking the power and jurisdiction of this Court under Section 439 (2) Cr.P.C.

During the hearing, on being asked as to the result of bail application no. 2261/2014 in which interim protection has been granted by this Court, a copy of the order dated 10.11.2014 has been submitted. The same is taken on record. The only question that was considered in the context of the said bail application was as to whether there was any impediment to the arrest of the petitioner after the graver offence under Section 302 IPC had been added. The learned Judge dismissing the said application by his order dated 10.11.2014 ruled against the petitioner thus endorsing the steps taken by the investigating agency.

The State refers to the ruling of the Supreme Court in *Prahlad Singh Bhati vs. National Capital Territory, Delhi*, (2001) 4 SCC 280 to argue that once the graver offence had been added, the application for anticipatory bail could not have been entertained. But then, as is noted by the court of Sessions in the order dated 18.10.2014, the respondents had already been arrested and taken into custody on 12.10.2014 and 13.10.2014, thereby rendering the previous bail order to be one having served its purpose and exhausted.

The court of sessions by the impugned order has not granted anticipatory bail. It is a case for grant of regular bail after re-arrest. The court of sessions, having exercised the discretion vested in it by the law, it being a judicious exercise of such discretion, there is no case made out for cancellation of bail under Section 439 (2) Cr.P.C.

The petition is dismissed.

R.K.GAUBA, J

NOVEMBER 22, 2018/nk
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