

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

% Judgment reserved on: 16th October, 2018
Judgment delivered on: 20th November, 2018

+ BAIL APPLN. 1806/2018

SUDESH Petitioner

versus

STATE (NCT OF DELHI) Respondent

+ BAIL APPLN. 2126/2018 & CrI. M.A. 31874/2018

PARDEEP Petitioner

versus

STATE OF NCT OF DELHI Respondent

Advocates who appeared in this case:

For the Petitioners: Mr Mukesh Kalia and Mr. Sanjeev Kumar, Advocates in
Bail Appln 1806/2018

Mr. K. Singhal, Mr. Nishant Bhardwaj and Ms.
Prasanna, Advs in Bail Appln 2126/2018.

For the Respondents : Ms. Neelam Sharma, Addl. PP for the State with
SI Ravinder

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioners seek regular bail in F.I.R. No. 390/2016 under Sections 302/120B/201/365/34 Indian penal code, Police Station: Alipur.

2. The case of the Prosecution is that on 14.06.2016, a missing report was lodged by the complainant regarding missing of his maternal grandmother Smt. Indrawati and aunt Geeta (Bua). On 17.06.2016, Sh Amardeep (Son of deceased Indrwati) came to police station and stated that he suspected that his mother and sister had been forcefully abducted by an unknown person. Subject FIR No. 390/16 was registered under section 365 IPC.

3. During investigation statement of the grandson of the deceased Geeta was recorded under section 161 Cr.P.C. wherein he stated that his mother Geeta had told him that she had received a call from accused Pardeep (Petitioner in Bail Appln 2126/2018) and she was going to meet him near BDO office Alipur.

4. As per the prosecution Call Detail Records of accused Pradeep were analyzed and accused Pradeep was interrogated in detail. Thereafter on 07.07.2016 accused and co-accused Ikramuddin were arrested.

5. It is alleged that in their disclosure statement they had stated that on 13.06.2016 they took Indrawati and Geeta in a vehicle and offered them juice which was laced with sedative. There-after they took the ladies to an agriculture field near the tubewell and strangulated Indrawati with the help of wire and accused Ikramuddin strangulated Geeta with help of her chunni. After this the dead bodies were put in a pit already dug by them.

6. As per the prosecution the dead bodies were recovered at the instance of accused persons Pardeep and Ikramuddin on excavation of the field after 25 days of murder. Post mortem report has suggested the cause of death as strangulation.

7. During investigation accused persons disclosed that Sudesh (Petitioner in Bail Appln 1806/2018) daughter-in-law of deceased Indrawati was also involved in the conspiracy along with Pardeep & Ikramuddin.

8. Sudesh wife of Amardeep was also arrested on 8.07.2016.

9. As per the prosecution there was three and half kila (around 16940 sq yards) agriculture land in the possession of Indrawati after the death of her younger son Pradeep @ Tilloo. Smt Geeta Wife of Ranbir Khatri was also residing with her mother Indrawati because of a dispute with her husband Ranbir Khatri.

10. As per the prosecution, Pardeep was cultivating the land of deceased Indrawati and she was demanding more money from accused Pardeep for cultivating her land.

11. It is alleged that Pardeep had made the last call on the mobile number of the deceased Geeta and was in constant touch with Sudesh and Ikramuddin. Location of accused Pardeep and Ikramuddin also corroborated the story of the prosecution.

12. It is alleged that the motive of accused is the property owned by deceased.

13. Learned counsel for the petitioners contended that petitioners have been falsely implicated. It is contended that there was a dispute between the deceased and Ranbir Khatri and that is the reason why deceased Geeta was living separately from her husband Ranbir Khatri. It is further contended that there were several complaints lodged by the deceased Indrawati. It is contended that Indrawati lodged a complaint against Ranbir Khatri that he had murdered her son. An FIR under section 302 was registered which was closed after the death of Geeta. It is further contended that Indrawati had launched several complaints that she was afraid of Ranbir Khatri.

14. Learned counsel for the petitioners contends that neither of the petitioners were to gain on account of the death of the deceased as they are not the beneficiaries. On the other hand it was Ranbir Khatri who has specifically benefited from the death of the deceased as he seeks to inherit the estate of Indrawati and Geeta.

15. Learned counsel for the petitioners further contend that bodies have been recovered from an open field which is not under lock and key of anyone and everyone can have access to the same. It is further contended that there is no independent witness of arrest of the petitioners or recovery of the bodies at the instance of the petitioners.

Further no magistrate was present for the purposes of inquest or for exhumation of the bodies.

16. Learned counsel for the petitioner further contends that an independent witness of the prosecution has deposed that he saw all the persons at the spot just before the death of the deceased. It is contended that said witness was purposely not asked to identify the accused in court by the Public Prosecutor. This, it is contended, was done as the prosecution was aware that he would exonerate the petitioners as they were not the ones who were present at the spot with the deceased.

17. Learned counsel for the petitioner further submits that even though there was sufficient evidence available which showed that it was not the petitioner but Ranbir Khatri and others who had committed the offence, the trial court failed to summon them and accordingly petitioner Pradeep had moved an application under section 319 Cr.P.C. for proceeding against the said persons. The application under section 319 Cr.P.C. was rejected by the trial court and the petitioner had filed a Criminal Revision before this court in which notice has been issued and same is pending.

18. Perusal of the record shows that the entire evidence has been concluded and the case is at the stage of final arguments. Since the petitioners have been charged with a very heinous offence and the entire evidence is over and case is at the stage of final arguments, it

would not be appropriate to release the petitioners on bail at this stage. Whether the prosecution witnesses have supported the case of the prosecution or there is material available on record to show that the petitioners are innocent is an exercise which has to be conducted by the trial court. It is the settled proposition of law that at the stage of consideration of an application for bail, the court is not to assess the evidence on record to ascertain as to whether the accused is guilty or not, that is the role of the trial court.

19. One of the considerations for bail is the stage of the case. If the case is at the very final stage like the present case, it would not be appropriate to release the accused on bail specially when the offence for which the accused is charged is heinous.

20. Considering the nature of allegations and the stage at which the trial has reached, I am not inclined to admit the petitioners to bail at this stage. The fact that a Revision Petition is pending against the rejection of the application under section 319 before this court would not be relevant as the Revision Petition may or may not be allowed.

21. In view of the above, the petitions filed by the petitioners are dismissed. It would be open to the petitioners to file fresh applications seeking bail, in case the Revision Petition filed by the petitioners, impugning the rejection of application under section 319 Cr.P.C. is allowed.

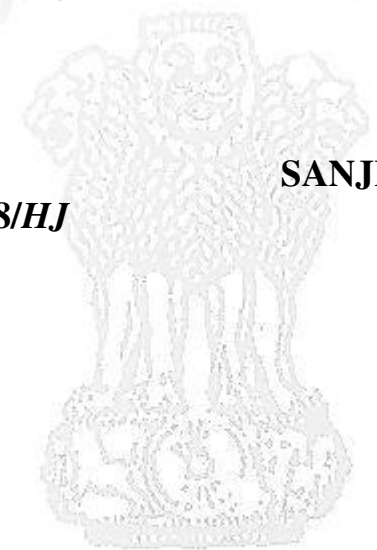
22. It is clarified that this court has not considered the application of the petitioners for grant of bail on merit and has rejected the same solely in view of the fact that the case is at the stage of final arguments.

23. Petitions are accordingly disposed of in the above terms. There shall be no orders as to costs.

24. Order *Dasti* under signatures of Court Master.

NOVEMBER 20, 2018/HJ

SANJEEV SACHDEVA, J



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