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

+ **BAIL APPLN. 1970/2019 & CRL.M.A. 37391/2019**

POOJA @ RAKHI KAPOOR

..... Petitioner

Through: Mr Ramesh Gupta, Sr. Advocate with
Mr R. D. Rana and Mr Arvind
Sharma, Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr Amit Gupta, APP for State with
SI Rajendra Dhaka, PS Rajouri
Garden.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **23.10.2019**

1. The petitioner has filed the present petition seeking regular bail in FIR No.1375/2014 under Sections 302/201 of the IPC registered with PS Rajouri Garden.
2. The allegation against the petitioner are serious. It is alleged that the petitioner is guilty of culpable homicide amounting to murder of her maid servant. The learned counsel appearing for the petitioner states that although the maid servant has succumbed to the injuries suffered at the hands of the petitioner, the same does not constitute an offence punishable under Section 302 of the IPC, as the petitioner had inflicted the same on account of grave and sudden provocation.
3. Mr Gupta, learned APP appearing for the State, points out that the

injuries on the body of the deceased are multiple. He states that there is hardly any portion of the deceased's body that does not show injuries.

4. It is also seen that the conduct of the petitioner has been less than ideal. In the first instance, it is alleged that the petitioner had left the deceased at the hospital and absconded. It is stated that she was arrested from Ambala on 18.01.2015; almost two months after the aforesaid FIR was registered. The FIR was lodged on 27.11.2014 and it is alleged that the incident had occurred on 26.11.2014.

5. Mr Gupta points out that there are other FIRs also that have been lodged against the petitioner. One of the FIRs (FIR No.782/2014 under Sections 52/506/323/24 of the IPC) relates to the petitioner creating a ruckus and threatening the erstwhile landlord of the premises where she was residing. She had threatened to involve him in false cases. The landlord had instituted the proceedings to evict the petitioner from the tenanted premises and had obtained a decree in that regard. It is stated that on 16.07.2014, when a bailiff had come to the house to execute the Court Order, the petitioner threw bricks at him from the first floor. This led to filing the said FIR (FIR No.782/2014).

6. There is yet another FIR (FIR No.645/2016 under Sections 186/353/332/323 of the IPC) registered with PS Hari Nagar. The said FIR was registered at the instance of jail staff. It is alleged that they had accompanied the petitioner to go to a doctor and the petitioner had created ruckus and had assaulted the doctor, the matron and her colleagues. In the process, the staff had sustained injuries. The said incident is not denied. However, Mr Ramesh Gupta, learned senior counsel appearing for the petitioner states that the petitioner was also injured in the process. This

Court is not required to examine as to which party was at fault. However, the fact that the petitioner is involved is clearly established.

7. The petitioner had, previously, filed a petition (W.P.(Crl.) 3295/2017 captioned '*Pooja @ Rakhi Kapoor v. The State Govt. of NCT of Delhi and Ors.*'), *inter alia*, praying that directions be issued to respondent nos.2 to 7 therein to not harass her, threat or humiliate her or to involve her in fake misbehaviour incidents. A Coordinate Bench of this Court had examined the averments made in this petition and had noted that the petitioner was involved in the more than thirty incidents of misbehaviour with the jail staff, doctors, DAPS staff, inmates etc. and the punishments imposed on the petitioner had been duly approved by the concerned District Judge. After examining the petitioner's conduct, the said petition was dismissed by an order dated 23.07.2018.

8. The petitioner had also filed an application for regular bail (Bail Appln. 1266/2018). However, the petitioner had withdrawn the same on 08.10.2018. The order passed by this Court indicates that on the said date, this Court had also noted that only fourteen witnesses out of sixty-six had been examined despite the fact that the petitioner has been in custody since 2015. Considering that the petitioner had been in custody for more than 3 years directions were given to the trial court to conclude the trial as expeditiously as possible.

9. It is noticed that although the petitioner had withdrawn the application for regular bail on 08.10.2018, she had applied for an interim bail which was granted and she was released on 25.10.2018. The interim bail was extended and the petitioner surrendered on 29.08.2019.

10. The petitioner had been granted interim bail mainly for reasons

pertaining to her minor son. The said reasons include seeking her son's admission to in a school; arranging boarding accommodation and for providing medical assistance to the said child.

11. Mr Ramesh Gupta, learned senior counsel, had referred to the decision of this Court in ***Dev Narain Pandey v. State (Delhi Administration): 1988 (1) Cri. 251*** and submitted that the petitioner therein had been sentenced to undergo imprisonment of only one year. He also referred to the decision in the case of ***Sujit Biswas v. State of Assam: (2013) 12 SCC 406*** and contended that the fact that the petitioner had absconded and ought not to be considered by this Court as a factor while considering the petitioner's application for bail.

12. He also emphasised that even though this Court, by an order dated 18.10.2018, had directed that the trial be completed as expeditiously as possible; the said order has not been complied with and as of date, only eighteen witnesses have been examined.

13. Considering the circumstances of this case, this Court does not consider it apposite to grant the relief as prayed for. The contention that the fact that the petitioner had absconded cannot be held against her, is erroneous. One of the principal considerations to be considered while considering an application of bail is whether the petitioner would have a propensity to avoid the proceedings. The decision in the case of ***Sujit Biswas (supra)*** is not applicable, as the observations made in that case were in the context of whether the fact that accused was absconding at the initial stage ought to be considered as a factor pointing to the guilt of the accused. It is in this context that the Court had noted that mere abscondence of an accused does not lead to a firm conclusion of his guilty mind. At this stage,

this Court is not pronouncing whether the petitioner is guilty of the offence for which she is charged. The fact that the petitioner had evaded arrest is material for consideration of bail. This court has also considered the fact that the petitioner was released on interim bail and had surrendered.

14. The fact that the petitioner is responsible for the death of the maid servant is admitted. The only explanation provided by the learned senior counsel appearing for the petitioner is that the same was as a result of grave provocation. The question whether the petitioner was provoked to lodge an attack on her maid is a matter to be considered by the Trial Court and this court is refraining from making any observations in this regard. However, it cannot be disputed that the offence is a serious one. This is undeniably one of the considerations that is required to be considered by the Court while considering an application for bail. The conduct of the petitioner as noticed above is also a factor that persuades this Court not to accede to the petitioner's request for grant of bail.

15. It is emphatically argued that in the last one year, only four witnesses have been examined. The petitioner's grievance in this regard is merited. This Court is of the view that the trial ought to have been concluded expeditiously. A report from the concerned Trial Court was called for which indicates the reasons for the delay. It is also pointed out that the Trial Court has passed orders to ensure that the prosecution be conducted under supervision of the DCP.

16. This Court also considers it apposite to direct the Trial Court to conclude the trial within a period of six months from today. The Trial Court shall not entertain any requests for adjournments.

17. Although the delay in trial during the last year is one of the factors to

be considered, however, this Court is of the view that the same is mitigated by the fact that the petitioner was released on interim bail almost through out this entire period of one year. As noticed above, she was granted interim bail only after a few days after the order dated 18.10.2018 was passed directing an expeditious completion of the trial. She had surrendered on 29.08.2019.

18. The petition is, accordingly, dismissed with the aforesaid directions. The petitioner is granted liberty to apply afresh after expiry of the period of six months from the date of this order. The pending application is also disposed of.

19. The Registry is also directed to send a copy of this order to the concerned DCP.

VIBHU BAKHRU, J

OCTOBER 23, 2019
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