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

Date of decision: 26.09.2019

+ CRL.M.C. 4196/2017

RAKESH DEVI

..... Petitioner

Through: Mr. Dharamraj Ohlan, Adv.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Kamal Kr. Ghei, APP for State
with Inspector Akshay Kumar and SI
Subhash Chandra, PS – S.P. Badli
Mr. Sumit Choudhary, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks directions for cancellation of anticipatory bail of the accused/respondent no. 2 in FIR No. 549/2017 under Sections 304/308/34 IPC, Police Station - S.P. Badli, granted vide order dated 18.09.2017 by the court of the learned A.S.J., Rohini, Delhi.

2. Brief facts of the case are that the crime scene has been recorded on the CCTV camera. As per the CCTV footage, the deceased husband of the petitioner/complainant had knocked on the gate of accused persons. The gate was opened by the co-accused mother of respondent No. 2 and she started talking to the deceased. Immediately thereafter, another co-accused Ravi

Rana came running from the street and knocked down the deceased. The deceased could never get up thereafter.

3. Thereafter, Rajesh Rana (wearing blue shirt) came out of his house with wooden logs/ lathis and was the first person to give a hard blow on the head of the deceased followed by others. The petitioner, who is wife of the deceased tried to save her husband but she was also assaulted repeatedly by all the accused persons.

4. The petitioner was also pulled away by the respondent no.2 to facilitate the other accused to hit the deceased while he was lying on the ground in unconscious state. The respondent no.2 was the first to land hard blows with lathi on the deceased. The accused persons kept on assaulting the deceased on his head and body continuously even after he became unconscious for about 15 minutes.

5. The deceased was admitted to Ambedkar Hospital on 30.06.2017 in unconscious state and on the next day he was shifted to Brahm Shakti Sanjivani Super Specialty Hospital, Bahadurgarh. He remained in an unconscious state and on ventilator support till he succumbed to his injuries on 07.07.2017 at 12:26 A.M. The injuries upon the deceased are directly related to the death of the deceased and hence, Section 302 IPC was added.

6. Learned counsel appearing on behalf of the petitioner submits that the police in connivance with the accused persons fraudulently inducted section 304 IPC instead of 302 IPC to facilitate the granting of bails, and hence succeeded in getting anticipatory bail for respondent no.2.

7. Subsequent to grant of anticipatory bail, charge sheet has been filed under Sections 302/307/34 IPC. He further submits that the accused persons were assaulting the deceased, while he was lying unconscious on the ground. The petitioner in the process of trying to save her husband from the accused, laid down upon the deceased. The accused persons with the intention to kill the petitioner also caused serious injuries and fractures. In the process to save her head, she put her hands on her head and resultantly the petitioner sustained severe injuries on her hands and sustained three fractures. Thereafter, the petitioner could not raise her hands to protect herself from the subsequent blows and therefore, sustained two severe injuries on her head also. The petitioner got operated upon her right arm elbow and a rod has been fixed there.

8. Learned counsel appearing on behalf the respondent No. 2/ accused submits that the deceased first assaulted Ravi Rana and thereafter, he went to their house and knocked at the door. Thereafter, a scuffle took place

between the mother of the respondent No. 2 and the deceased. Consequently, Ravi Rana and Rajesh Rana, both brothers came and scuffled with the deceased. He further submits that it's a case of grave provocation resulting from the injury caused to Ravi Rana, brother of the accused (Rajesh Rana), due to the earlier assault on him by the deceased, thus the police rightly charged the accused under Section 304 IPC.

9. He further submits that the Trial Court after considering all these facts had granted anticipatory bail to the accused – Rajesh Rana.

10. On perusal of the impugned order dated 18.09.2017, passed by the learned Additional Sessions Judge, only contention of the learned counsel for applicant / accused has been recorded, which is reiterated as under :

“It is contended by Ld Counsel for the applicant that applicant has apprehension of arrest in this false case. It is further contended that from the perusal of CCTV footage it would be crystal clear that the applicant was not carrying any danda with him rather he was intervening between his parents and uncle to be peaceful. It is further contended that from the CCTV footage, it is clear that there is one witness namely Tej Singh, who saw the whole Incident and whose statement has been recorded and in his statement, he has not stated anything against the applicant. It is further contended that complainant and her husband want to grab the property of the applicant and his family in regard to which 4-5 civil cases are pending between the complainant and co-accused persons.”

11. Upon hearing the learned counsel for the applicant/ accused, the learned ASJ has passed the order as under:

“Considering the above facts and circumstances and the fact that nothing has to be effected from the possession of applicant, accordingly, in the event of arrest, accused Rajesh Rana, be admitted to bail on his furnishing personal bond in the sum of ₹50,000/- with one surety in the like amount, to the satisfaction of concerned SHO/IO concerned.”

12. Thus, there is no reasoning of the learned Judge as to on what basis the anticipatory bail has been granted to the respondent No. 2.

13. In case of ***State of Orissa vs. Mahimananda Mishra, (2018) 10 SCC 516***, the Hon’ble Supreme Court held as under:

*“ 12. Though this Court may not ordinarily interfere with the orders of the High Court granting or rejecting bail to the accused, it is open for this Court to set aside the order of the High Court, where it is apparent that the High Court has not exercised its discretion judiciously and in accordance with the basic principles governing the grant of bail. (See the judgment of this Court in ***Neeru Yadav v. State of U.P. and Prasanta Kumar Sarkar v. Ashis Chatterjee***). It is by now well settled that at the time of considering an application for bail, the Court must take into account certain factors such as the existence of a prima facie case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the courts as well as the criminal antecedents of the accused. It is also well settled*

*that the Court must not go deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a prima facie case against the accused. [See the judgment of this Court in **Anil Kumar Yadav v. State (NCT) of Delhi.**]*”

14. This Court, for its satisfaction has played the CD of the incident on the desktop of the Court and the incident was seen in the presence of the advocates appearing on behalf of the parties.

15. In the incident, Ravi Rana, who was wearing checked shirt, firstly attacked the deceased and immediately thereafter he was followed by Rajesh Rana(Respondent No.2 herein), wearing blue shirt, who hit the deceased with a *danda*. Thereafter, the deceased fell down and then another accused assaulted him brutally even though there was no movement of the deceased.

16. In such a situation, I fail to understand how the police has initially added Section 304 IPC whereas on the date of granting anticipatory to the respondent No. 2, the deceased had already expired. This fact was not brought to the notice of the Court which is evident from the order of the learned Additional Sessions Judge as no such submission of the prosecutor is recorded. Since the present case is of murder which is captured by the CCTV Cameras and CD of the same is part of the judicial file, therefore, I fail to understand as to what were the reasons for granting anticipatory bail

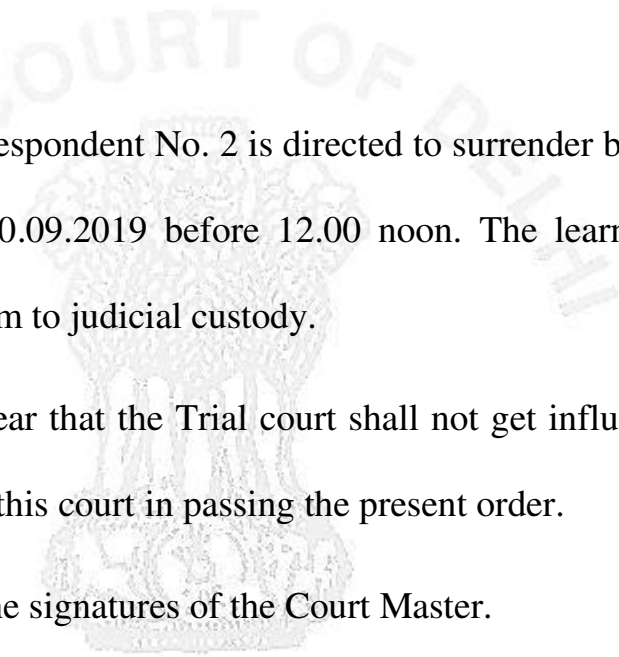
vide order dated 18.09.2017.

17. In such cases, if serious injuries are caused by the accused beating the victim indiscriminately, such an accused is not entitled to be enjoying the liberty of freedom, otherwise a wrong message will go to the society. Accordingly, I hereby set aside the order dated 18.09.2017, passed by the learned Sessions Judge.

18. Consequently, the respondent No. 2 is directed to surrender before the learned Trial Court on 30.09.2019 before 12.00 noon. The learned Trial Court in turn shall send him to judicial custody.

19. I hereby make it clear that the Trial court shall not get influenced by the observations made by this court in passing the present order.

20. Order *dasti* under the signatures of the Court Master.


(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 26, 2019/PB