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

Date of decision: 26.09.2019

+ CRL.M.C. 4208/2017

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 bail of the accused/R2 in FIR No. 549/2017 under Sections 304/308/34 IPC, Police Station - S.P. Badli, granted vide order dated 27.09.2017 passed by the learned A.S.J., Rohini, Delhi.

2. Brief facts of the case are that the alleged crime has been captured 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, i.e. mother of respondent No. 2 and she

started talking to the deceased. Immediately thereafter, respondent No. 2 - Ravi Rana came running from the street and knocked down the deceased. The deceased could never get up thereafter.

3. Then, Rajesh Rana (wearing blue shirt and brother of the respondent No. 2) 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 by all the accused persons and injuries were sustained by her.

4. The petitioner was pulled away by the brother of respondent no.2, to facilitate attack upon the deceased by respondent No. 2 while the deceased was lying on the ground in an unconscious state. Respondent no.2 was the first person to assault the deceased with lathis. Even after the deceased had become unconscious, the accused persons kept on striking on his head and other parts of body for about 15 minutes continuously.

5. The deceased was admitted to Ambedkar Hospital on 30.06.2017 in an 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. Therefore, the injuries upon the deceased are directly related to the death of the deceased and Section 302 IPC has been 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 bail and that is how the accused succeeded in getting anticipatory bail.

7. Subsequent to grant of anticipatory bail, charge sheet has been filed under Sections 302/307/34 IPC. Counsel for the Petitioner 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, herself laid down upon the deceased. The accused persons with the intention of killing the petitioner, hit the petitioner on her head. In the process of trying to save her head, she put her hands on her head and, resultantly sustained severe injuries on the hand and also sustained three other 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 hand's elbow and a rod has been fixed there.

8. Before the Court of Sessions, it was argued by the learned counsel for respondent No. 2 that at about 12.30 PM, he received a phone call from his father's mobile asking him to come home as husband of the complainant, i.e. Rajender (now deceased), had broken their drainage system and was threatening them that he would eliminate their family. It is further contended that upon receiving the call the accused left the library. When he was going to his house at about 4.30 pm, Rajender (deceased) gave an axe blow to him, due to which he sustained injuries on his head. Consequently, he was admitted to BSA hospital. It was further contended that the complainant and her husband forcefully tried to enter in their house and threatened to kill them and also abused the mother of respondent no.2.

9. It is observed by the learned Sessions Judge in the impugned order that as per the CCTV footage, the deceased was seen carrying an axe while heading towards the house of the accused. Accordingly, the deceased was an aggressor and he went towards the house of respondent No. 2 having an axe in his hand with the intention to assault the family members of respondent No. 2.

10. Upon hearing the learned counsel for the applicant (respondent No. 2 herein), the learned ASJ has passed the order as under:

“Keeping in view the above contentions and considering the facts and circumstances of the case and looking the period of the custody, applicant is admitted to bail, on his furnishing PB in the sum of Rs 50,000/- with one surety in the like amount, to the satisfaction of Ld MM/Link MM/Duty MM.

Nothing stated herein shall tantamount to have any expression of opinion on the merits of the case.

Bail application disposed of, accordingly.”

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

12. This Court, for 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.

13. In the incident, it is found that though the deceased was carrying the axe in his hands and approached the door of respondent No. 2, however, till then, there was no scuffle. The mother of respondent No. 2 pushed the deceased, however, the deceased did not hit the mother of the respondent No. 2/accused. Thereafter, respondent No. 2 came running and pushed the deceased and then co-accused Rajesh Rana who is brother of respondent No. 2 came and hit the deceased. As per the CCTV footage, Respondent No. 2 indiscriminately attacked the deceased and he did not even try to save the

deceased. Thus, this very accused was the aggressor and hit the deceased and the petitioner– Rajesh Rana, also gave grievous injuries to the deceased, due to which the deceased succumbed to injuries on 07.07.2017.

14. I am conscious of the fact that the bail was granted after 87 days of judicial custody on 27.09.2017. However, the petitioner approached this Court immediately after passing of the said order.

15. 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.]”

16. The present case is of a serious nature and the accused herein along with his brother and father attacked the deceased very brutally. Due to this, the deceased sustained grievous injuries to which he succumbed.

17. As the case is heinous and the deceased died due to indiscriminate beating inflicted upon him, therefore, such an accused is not entitled to liberty and freedom, otherwise a wrong message will go to the society.

18. It is also not out of place to mention here that after granting bail to the accused, the police added Section 302 IPC. Prior to that, Section 304 IPC was added after the death.

19. The facts of the death of the husband of the complainant and the addition of Section 302 IPC at a later stage, were never brought to the notice of the Trial Court. This is evident from the order of the learned Additional Sessions Judge. Moreover, no such submission of the prosecutor is recorded, which is evident from the order granting bail wherein the FIR is shown to have been registered under Sections 304/308/34 of IPC.

20. Accordingly, I hereby set aside the order dated 27.09.2017, passed by the learned Sessions Judge.

21. 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.

22. I hereby make it clear that the Trial Court will not get influenced during Trial, by the observations made by this Court in passing the present order.

23. The petition is, accordingly, allowed and disposed of.

24. Order *dasti*, under the signatures of Court Master.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 26, 2019

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