

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

+ **BAIL APPLN. 03/2020**

% **Decided on : 18th February, 2020**

SMT. NASRIN

..... Petitioner

Through: Mr. Prabhash Singh, Advocate.

versus

STATE

..... Respondent

Through: Ms. Rajni Gupta, APP for the
State with Insp. Parmod Gupta,
SHO, Shashtri Park.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J. (Oral)

1. This petition has been filed by the petitioner seeking anticipatory bail in case FIR No. 0361/2019, U/s 302/201/120B & 34 IPC, registered at Police Station, Shashtri Park, North East District, Delhi.

2. In brief the case of the prosecution is that on 21.7.2019 vide DD No.12A, a male unknown dead body with multiple injuries was found in jungle near Yamuna Khadar. No eye witness was found. On 22.7.2019, deceased was identified as Imran, son of Riyashat, from his finger prints as he was previously found involved in FIR No. 198/11, dated 24.5.2011 under Section 304/34 IPC, P.S.Usmanpur, Delhi.

3. During the course of investigation, accused Vipin Mehra and Karan Singh were arrested on 24.7.2019 and Section 201/34 IPC was also added in the case. It is alleged that Vipin Mehra was real nephew of Johny who is deceased in case FIR No. 198/2011 and this Johny, according to the prosecution, is the brother of the applicant. It is further alleged that the petitioner has been murdered by the Vipin with the help of his friend Karan to take revenge of death of Johny. It is alleged that the petitioner is the real maternal aunt of accused Vipin and sister of Rani and deceased Johny. It is alleged that during investigation on 21.9.2019, one Chanda, sister-in-law of Nazar, brother of deceased Imran told that on 20.7.2019 at about 6:30 PM, the petitioner had called her on her mobile phone and asked “*what happened at pathania place, please just enquire*” . It is alleged that at that time petitioner had made this call just after the incident. According to the prosecution, Iqbal who is the brother of the deceased had also placed suspicion on the petitioner for the murder of his brother Imran. Mobile phone of Chanda was taken into possession and sent to FSL.

4. It is submitted by the counsel for the petitioner that petitioner has been falsely implicated. He further states that at the time of incident she was at Ajmer. Tickets and photographs in this regard have also been filed on record. He further argues that petitioner at no point of time was in touch with accused Vipin and Karan. It is further submitted that petitioner has joined investigation four times. It is further urged that nothing has been stated in the charge sheet filed

against the two accused persons with regard to the petitioner being a part of conspiracy.

5. On the other hand, it is urged by the learned APP for the State that this case is based on circumstantial evidence and the motive in this case is revenge, as brother of the petitioner was killed by Imran deceased in this case. It is further urged that the plea of alibi taken by the petitioner is a defence and it can be proved during trial.

6. It is further submitted by the Id. APP that petitioner had made a call to Chanda, on the date of incident to know as to what happened in the house of Pathania who is the mother of the deceased. It is further argued by the Id. APP that petitioner never called Chanda months prior to this call. It is argued by Id. APP that call made to Chanda was not coincidental as she wanted to know about the fate of Imran.

7. It is further argued by the learned APP, on instructions from the IO, that petitioner though had joined the investigation but she has not come out with true facts and mobile phone of the petitioner is also to be recovered. On the contrary, it is submitted by the counsel for the petitioner that mobile phone of the petitioner has been lost so she has not handed over the mobile phone to the IO.

8. On my query from the counsel for the petitioner whether petitioner has blocked her SIM Card or lodged any NCR with regard to the loss of her mobile phone he informed that no such action has been taken by the petitioner. So this contention raised by the counsel for the petitioner does not inspire confidence.

9. In view of the aforesaid circumstances, this is a case based on circumstantial evidence. The contention made by learned counsel for the petitioner that petitioner was not present in Delhi on the date of incident and she was in Ajmer is a plea of *alibi* for which onus to prove lies on the petitioner and this cannot be looked at this stage and it has to be proved during the trial. As far as the contention that there is no evidence against the petitioner, it is too early to say this as investigation is still going on. The statement of Chanda recorded under Section 161 Cr.P.C shows that out of the blue one day petitioner enquired about well being about the house of Pathania who is the mother of the deceased. The argument of learned APP for the State that the petitioner has not contacted Chanda for months together prior to the incident and suddenly she calls Chanda on the date of incident after the murder cannot be brushed aside lightly. The mobile phone of the petitioner is to be recovered and according to the IO, petitioner is not cooperating in the investigation due to protection granted to her. Looking to the seriousness of the offence and to unravel the entire conspiracy and for the recovery of her mobile phone custodial interrogation of the petitioner is required.

10. In these circumstances, the bail application is therefore dismissed.

RAJNISH BHATNAGAR, J

FEBRUARY 18, 2020/ib