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

+ BAIL APPLN. 806/2020

RAJKUMARI UPADHYAY Petitioner

Through: Mr Nikhilesh Kumar, Advocate.

versus

STATE Respondent

Through: Mr Ravi Nayak, APP for State with
Insp. Ashok, PS Pul Prabhladpur.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **29.07.2020**

[Hearing held through video conferencing]

1. The petitioner has filed the present petition, *inter alia*, praying that bail be granted in connection with FIR No.0502/2015 under Section 302/506/342/34 of the IPC registered with PS Pul Prahladpur, Delhi.
2. The FIR in question was registered in respect of an incident that had occurred on 05.12.2015. It is alleged that the petitioner along with all her family members including daughter-in-law had dragged the victim (since deceased) inside their house and had severely beaten him. It is alleged that the victim was an immediate neighbour and lived next door to the petitioner and her family. There was quarrel between the sons of the petitioner and the father of the victim regarding parking of a motorcycle.
3. On 05.12.2015 at 1:25 AM, a PCR call was made (which was

recorded as DD No.5A). The caller reported that the thief had been caught at F-183, Gali No.18, Mittal Colony, Pul Prahladpur. It is the prosecution's case that after the victim was dragged by the petitioner's family, he was mercilessly beaten. His cries were heard by other persons in the neighbourhood. One of them reported the same to the victim's father, who rushed to the petitioner's house but the petitioner and her family members did not open the door. He made a call to the PCR. This call was made at 1:47 AM on the same date and the information was recorded as DD No.6A. After the police arrived at the spot, the door to the petitioner's residence was opened. The victim stumbled out. He was drenched in blood and the petitioner and other family members (co-accused) were seen standing inside the house. The victim allegedly informed his father that he had been dragged and beaten by Dilip @ Duldul, Pradeep @ Tiger, his mother and his sister-in-law. They had caught hold of him and beaten him. Thereafter, he lost consciousness.

4. Subsequently, the victim succumbed to his injuries and expired.

5. Mr Nayak, learned APP appearing for the State submits that the petitioner's version that they had caught a thief is not believable because admittedly, the petitioner knew the victim. He submits that even if it is assumed – although there is no reason to do so – that the victim had entered the petitioner's house with the intension of committing theft, there was no excuse for the petitioner and her family members to beat him mercilessly.

6. The status report indicates that 25 witnesses are proposed be examined by the prosecution out of which 09 witnesses are public witnesses. The same includes the mother of the deceased as well. This Court is

informed that only 04 witnesses have been examined so far.

7. Admittedly, the petitioner had voluntarily surrendered on 30.06.2016 immediately after her application for anticipatory bail was rejected. Thus, the petitioner has been in custody for almost four years. She is currently on interim bail.

8. Since the petitioner had surrendered voluntarily, there is no reason to suspect that the petitioner would evade the process of law. The public witnesses are yet to be examined, however, this Court does not consider that releasing the petitioner on bail poses a significant risk of the petitioner influencing the witnesses or otherwise tampering with the evidence. The petitioner is a woman of advanced age and has been in custody for a significant period of time (four years). The risk of the petitioner tampering or influencing the witnesses cannot be equated with the risk of releasing her sons, who are currently in custody. Thus, the petitioner's case stands on a separate footing.

9. Keeping the aforesaid in mind, this Court considers it apposite to allow this petition. The petitioner is admitted to bail on furnishing a Personal Bond in the sum of ₹20,000/- and one surety of an equivalent amount to the satisfaction of the Duty Magistrate. This is also subject to the following further conditions:-

- a) the petitioner shall not leave the National Capital Territory of Delhi;
- b) the petitioner shall provide her contact number and ensure that she is reachable at all times;

- c) the petitioner shall telephonically mark her presence before the concerned SHO (PS Pul Prahladpur) on first Monday of each month and report her whereabouts;
- d) the petitioner shall not contact the family members of the victim or any of the witnesses either directly or indirectly; and
- e) the petitioner shall ensure that she is available for all proceedings before the trial court.

10. The petition is allowed in the aforesaid terms.

11. A copy of this order be communicated to the concerned Jail Superintendent.

VIBHU BAKHRU, J

JULY 29, 2020
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