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

Decided on: 29th June, 2020

+ **BAIL APPLN. 1150/2020**

HARJEET KAUR @ RUBY BHATIA Petitioner
Through **Mr. R.N. Sharma, Adv.**

versus

STATE Respondent
Through **Ms. Meenakshi Chauhan, APP**
with SHO Gursewak Singh,
P.S. Tilak Nagar

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGEMENT (ORAL)
% **29.06.2020**
(By Video Conferencing)

C.HARI SHANKAR, J.

Crl. M.A. no. 7307/2020 (exemption)

Allowed, subject to all just exceptions. The application is disposed of.

BAIL APPLN. 1150/2020

1. This is an application for grant of regular bail.

2. The applicant was arrested on 3rd September, 2018, and is charged with having committed offences punishable under Sections 302/365/201 read with Sections 120-B/34 of the Indian Penal Code, 1860 (IPC). She has been incarcerated since 3rd September, 2018, and has, therefore, spent about one year and ten months behind bars.

3. During the course of these proceedings, an order was passed, by this Court, on 20th August, 2019, directing conclusion of the recording of the evidence of the prosecution witnesses within nine months. As on date, however, it is an admitted position that only 15 prosecution witnesses have been examined, out of 42.

4. Mr. R.N. Sharma, learned counsel appearing for the applicant, submits that the family members of the victim and other public witnesses have been examined, and of the remaining 27 witnesses, the majority are official witnesses.

5. Mr. Sharma also sought to contend that the evidence, in the case, is hopefully insufficient, to sustain conviction of his client. He also highlights the fact that the conduct of his client, during incarceration, has been satisfactory and that she has no previous conviction, or offence, to her credit. He further submits that his client is the mother of a 20 year old unmarried girl, and that, therefore, her continued incarceration is also detrimental to the welfare of her daughter.

6. Ms. Meenakshi Chauhan, learned APP appearing for the respondent emphasizes, on the other hand, the seriousness of the charge against the applicant, and submits that she is under trial for having committed murder. She also submits that the material garnered, thus far, is highly incriminatory in nature, and that conviction, would, most likely, follow. She further submits the fact that the applicant may not have committed any offence in the past is not a valid consideration, while examining her case for bail. Several witnesses, she points out, have yet to be examined, and release of the applicant, at this stage, may seriously prejudice the proceedings in trial.

7. Having heard learned counsel for the applicant and learned APP for the State, this Court is required to bear in mind, at the very outset, the primary fact that the present case is one of pre-conviction incarceration. There is a qualitative difference between a prayer for bail during trial, and a prayer for suspension of sentence, after conviction. As of today, there is no finding, by any competent criminal court, finding the applicant guilty of having committed the alleged offence. Apart from the statement of the applicant under Section 161 of the Cr PC, the evidence against the applicant, on which the prosecution relies, is largely circumstantial in nature, such as the recovery of a blood-stained diary and the cellphone of the deceased from the car of the applicant, and CDR records indicating that she was in the area at the time of commission of the offence. It cannot be said, definitively, that the evidence against the applicant is so clinching, as is likely, in all probability, to result in her conviction. No *prima facie* view, regarding the applicant's guilt, can be arrived at, without a trial.

8. Unfortunately, it is also a matter of record that, on 20th August, 2019, this Court has specifically directed conclusion of recording of evidence of the prosecution witnesses within nine months, but that even as on date, only 15, out of 42 prosecution witnesses, have been examined. 27 witnesses remain to be examined, which may take any length of time, especially given the present status, when functioning of Courts has been severely impeded by the COVID-2019 pandemic - the applicant is having to undergo incarceration, even before any guilt has been fastened on her. She has, as on date, suffered about one year and ten months behind bars.

9. Ms. Chauhan does not dispute the submission of Mr. Sharma that the majority of remaining witnesses are official witnesses. Neither does she traverse the submission, of Mr Sharma, that the evidence of most of the public witnesses, including the family members of the deceased, has already been recorded. The applicant being a lady, with no criminal antecedents, and the mother of a 20-year old girl, the likelihood of her tampering with the evidence, or influencing the remaining witnesses, who are mostly officials, is remote. Significantly, even in cases where there is reasonable belief that the undertrial has committed an offence punishable with death or with imprisonment for life, the proscription, in clause (i) of Section 437(1), Cr PC, to grant of bail, stands statutorily excepted (by the proviso to the sub-section), where the undertrial is a woman.

9. It is also an undisputed position that the applicant does not

have, to her credit any previous conviction or FIR, and is not under trial in any other case. Her conduct, during her incarceration, is also reported, in the nominal roll furnished by the Jail Superintendent, to be satisfactory.

10. Admittedly, the applicant is also the mother of a 20 years old daughter and continued deprivation, of the company of her mother, would, invariably, be detrimental to the interest of the applicant's daughter.

11. A High Power Committee of this Court, constituted by the Government of National Capital Territory of Delhi and headed by a learned sitting Judge of this Court, has recommended favourable consideration of applications, for bail, by persons (irrespective of gender) under trial for having committed offences under Section 302 IPC, with no other offence to their credit, who have completed two years of incarceration. The applicant has completed about one year and ten months behind bars.

13. Given the aforesaid facts, I am of the view that, in the interests of justice, the applicant deserves to be released on bail.

14. It is ordered accordingly.

15. The applicant is, therefore, directed to be released on bail, subject to her furnishing a bail bond of Rs. 20,000/-, with a solvent surety of the like amount to the satisfaction of the Jail Superintendent,

within a period of two days. On furnishing of the said bail bond and surety, the applicant would be released on bail forthwith.

16. The applicant is restrained from leaving the boundaries of the city, without prior permission of the learned trial court or of this Court. She is also directed to report, at P.S. Tilak Nagar, every Friday at 11:00 am. The police authorities are also at liberty to visit the premises of the applicant and ensure that she is conducting herself appropriately, consequent to her release bail. The applicant is also restrained from tampering, in any manner with the evidence, and is directed to maintain proper conduct, failing which the facility of bail, granted by this Court order, is likely to be withdrawn.

17. The bail application is allowed in the aforesaid terms.

18. Copy of this order be uploaded on the website positively within 24 hours and forwarded to learned counsel for the parties via e-mail.

C. HARI SHANKAR, J.

JUNE 29, 2020

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