

\$~3 & 4

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

Date of decision: 4th September, 2020

+ **BAIL APPLN. 1192/2020 & CRL. M.A. 7443/2020**

NAUSHAD ALI Petitioner

Through: Mr. Jitender Kumar, Advocate.
versus

THE STATE OF NCT OF DELHI Respondent

Through: Mr. Raghuvinder Verma, APP.
Mr. Prakash Roy, SI, IO.

With

+ **BAIL APPLN. 1806/2020 & CRL. M.A. 9609/2020**

RAJIK @ SAMEER Petitioner

Through: Mr. Jitender Kumar, Advocate.
versus

THE STATE (NCT OF DELHI) Respondent

Through: Mr. Raghuvinder Verma, APP.
Mr. Prakash Roy, SI, IO.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been held through video conferencing.

CRL. M.A. 7444/2020 in BAIL APPLN. 1192/2020(exemption from filing court fee and attested affidavits)

CRL. M.A. 9610/2020 in BAIL APPLN. 1806/2020(exemption from filing court fee and attested affidavits)

2. These are applications seeking exemption from filing court fee and duly attested affidavits. Binding the deponent of the affidavit to the contents of the application, the exemption is granted. Insofar as the court fee is

concerned, the same be deposited within one week. Application are disposed of. Registry to submit a report in case the court fees is not filed after a month.

BAIL APPLN. 1192/2020

BAIL APPLN. 1806/2020

3. The present two cases arise out of FIR No.388/2019. The Petitioners have been charged under Sections 302/201/120-B/34 IPC. The brief background is that the deceased, Ms. Aafrin, had visited the residence of Mr. Naushad Ali, who she is stated to be having a love affair with, and was pressurizing to get married. Mr. Naushad Ali is accused of having used a *danda* and hit Ms. Aafrin on her head. Assuming that she was dead, Mr. Naushad Ali along with the other accused, Mr. Rajik@Sameer, is accused of having packed her in a jute bag and dumped her in a *ganda nala*. Thereafter, a case was registered against both of them under Sections 302/201 IPC and they were taken into custody on 7th October, 2019.

4. Mr. Jitender Kumar, Id. counsel for the Petitioners, submits, with respect to Mr. Naushad Ali's case, that a case of murder is not made out as the deceased was conscious after she was hit and she passed away only after the body was dumped into the *ganda nala*, as the post mortem report stated the cause of death to be "*asphyxia as a result of ante mortem drowning*". He relies upon the judgment in *Palani Gaindan v. Emperor, (1919) ILR 42 Mad. 547* to argue that in such a situation, only a case under Section 308 IPC is made out and not one under Section 302 IPC.

5. Insofar as the other accused, Mr. Rajik@Sameer, is concerned, it is submitted that by the time Mr. Rajik@Sameer had arrived in his vehicle, the deceased had already been hit and packed into the jute bag. It is thus

submitted that he had no role to play in the murder of the deceased.

6. On the other hand, Mr. Verma, Id. APP submits that both the accused are equally guilty under Section 302 IPC. Insofar as Mr. Rajik@Sameer's case is concerned, Id. APP submits that the death may not have been caused by the *danda* being hit on the head of the victim, however, the act of packing her in a jute bag and dumping her in the *ganda nala* amounts to murder. Thus, Section 302 IPC is clearly applicable in this case.

7. After considering the rival submissions of the parties and perusing the nominal roll, it is seen that the Petitioners have been in custody for approximately 10 months. The question as to whether the offences of the Petitioners are to be taken cognizance of under Section 308 IPC or Section 302 IPC, is to be heard at the time of framing of charges and not at this stage. The Court is thus not inclined to grant bail in this case, in view of the conduct of both the Petitioners who, after the victim was hit with a *danda*, did not give her any medical help. Under these circumstances, the request for bail is rejected.

8. However, the Petitioners are given liberty to make their submissions as regards the question of whether charges should be framed under Section 302 IPC or 308 IPC at the appropriate stage. The said submissions shall be considered on merits without being prejudiced by the submissions made by the parties herein, as well as the observations of this Court. Considering the nature of this matter, the Trial Court ought to take up the matter at an early date including the question as to whether the Petitioners are to be charged under Section 302 IPC or Section 308 IPC and endeavour to pass orders within a period of three months from today. The Trial Court may conduct the hearing through video conferencing, if required. Copy of this order be

communicated to the concerned Id. ASJ, by the IO concerned.

9. The bail applications are disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 4, 2020

dj/T/Ak

