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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CrI.M.C. No. 1628/2020**

RUKSANA KHATOON

..... Petitioner

Through: Mr.Osama Suhail, Samama Suhail
and Mr. Animesh Khanna, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for State
Mr.Piyush Gupta, Mr.V.K. Singh,
Ms. Kirti Madan, Mr. Kapil Goyal,
Advocate for R-2

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **10.08.2020**

The petitioner has sought the cancellation of interim bail granted to the respondent No.2 vide order dated 28.7.2020 of the learned Additional Sessions Judge (North-East) Karkardooma Courts, Delhi, whereby the applicant was granted interim bail for a period of three weeks subject to terms and conditions as imposed thereby with directions to the applicant to surrender before the Jail authorities after the expiry of three weeks of the bail period.

Learned counsel for the respondent, in reply to a specific Court query has informed that the respondent no.2 was released from the jail on 29.7.2020. The status report has been submitted by the State pursuant to the directions dated 7.8.2020. The impugned order indicates to the effect that it was observed thereby that the interim bail was granted without commenting

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on the merits of the case, and it was observed vide the impugned order that admittedly, there was no previous complaint to any of the authorities regarding any sort of dispute with the applicant or his family members at any point of time of marriage and also the medical documents of the child having been got verified from the Jag Pravesh Chandra Hospital through the Investigating Officer which showed that the child had fever 100.2 F and breathing problem and in as much as the verification report indicated genuineness of the documents with the doctor having opined that the learned Trial Court observed to the effect that the child having high fever and breathing problem cannot be said to be a good sign in the present day pandemic situation and hence, the respondent No.2 was granted interim bail for a period of three weeks with the terms and conditions as imposed vide the impugned order.

The petitioner has assailed the said order submitting to the effect that there are other persons in the family of the petitioner to look after the petitioner's child and that the allegations levelled against the petitioner are made in as much as the petitioner is alleged to have committed an offence punishable under 498A/304B/34 of the Indian Penal Code, 1860, and it has inter alia been submitted through the application and the submissions made that there have been repeated intermittent demands that have been made by the petitioner and his family by humiliating the deceased and her family members and that even on 8.7.2020 when the father of the deceased had been got admitted at the ICU due to financial exigencies though the respondent No.2 was called upon to return the money that had been given but he refused to do so and the same resulted into a physical assault and violence. It was inter alia contended on behalf of the petitioner that there are

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other averments made in the petition leading to the effect that the aspect of suicide is contradicted by the prima facie evidence that is reflected through the investigation conducted as averred in para 3 of the petition, which reads to the effect.

"3. Accused, alleged Suicide which is contradicted by the following Prima facie material, action and conduct:

- a) Body was on the bed when the Police came*
- b) The Alleged Dupatta was found to be on the Sofa without any wrinkles or any semblance that it could have been used by the Deceased*
- c) Bangles (Chudi) was found worn only on one hand.*
- d) Broken bangles were found on the floor.*
- e) Several Injuries on different parts of the body were clearly visible.*
- f) Mobile phone of the Deceased was not found at that point of time and even until now.*
- g) No PCR/100 by the Husband/accused or any of other accused person or his family members justifies the phrase guilty mind begets guilty conduct.*
- h) That though the FIR was registered under Section 498-A/304B/34IPC, PS New Usmanpur vide FIR No. 0407/2020 against husband, Father in Law, Mother in Law, Sister In Law, Brother in Law yet only Husband was arrested and not other members of his family."*

During the course of submissions made on behalf of the petitioner it has been submitted that the applicant's child was not so seriously ill that he be granted interim bail as has been granted vide the impugned order dated 28.7.2020 and he had been admitted to AMFAH Lifeline Hospital is only indicated to have been admitted for febrile fever i.e. merely feverish and that thus there are no grounds for the grant of interim bail that had been so granted to the applicant.

On behalf of the State, learned APP for the State supports the claim of

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the petitioner submitting to the effect that the statement of Mohd. Jaffar Iqbal, the brother-in-law, of the petitioner is on the record submitting that the applicant's sister Sajida Praveen is there to look after the petitioner's child along with Jamal, the servant of Abdul Salaam and further more it has been submitted on behalf of the State that Santosh S/o Vijay Ram Sharma was examined who stated to the effect that the petitioner's family members have been coming and going to their residence and are virtually absconding from the same and it has thus been submitted on behalf of the State that the likelihood of the applicant absconding cannot be ignored. However, the verification report that has been submitted by the State indicates that the sister and the brother-in-law of the accused were found present at the time of inquiry and that they had provided the treatment papers of the minor child of the respondent No.2 which indicated that the minor child was admitted in the hospital w.e.f. 1.8.2020 to 4.8.2020 and is still under treatment from the said hospital. The said status report further indicates as is also indicated through the impugned order that the ailment of the child from the Jag Pravesh Hospital has also been verified that he was under treatment from the OPD's from 22.7.2020 to 23.7.2020 and the document of AMFAH Lifeline Hospital is on the record which indicates the condition and admission of the minor child on 1.8.2020 and discharge on 4.8.2020. Significantly, the status report indicates febrile illness but the diagnosis which this document states is acute febrile illness with next appointment indicated to be within five days. The said document is dated apparently 4.8.2020, the date of discharge of the minor child from the hospital.

On behalf of the respondent No.2, it has been submitted that there is not a whisper of an averment in the petition and the status report that there

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has been any misuse of the liberty granted to the applicant vide the order dated 28.7.2020 i.e. the impugned order. Though there are submissions also made on behalf of the respondent No.2 that the deceased was under depression as has rightly been contended by the petitioner through the averments made in the petition, the same presently at this stage cannot be adjudged without being examined on the anvil of the cross-examination of the witnesses of the prosecution. However, the factum that there has been no misuse of the liberty granted by the applicant vide order dated 28.7.2020, and the factum that the child of the applicant has undoubtedly been hospitalized are aspects which cannot be overlooked. In the circumstances, there is no ground whatsoever to modify the impugned order dated 28.7.2020. However, the applicant shall surrender on the expiry of the interim bail period with a further condition imposed on the applicant to the effect that he shall drop a pin on the Google map to ensure that his location is available to the Investigating Officer at all times and he shall make a telephonic presence to the Investigating Officer of the case on each day by 9:30 a.m. during the period that he is on interim bail and shall appear before the Investigating Officer as and when he required during the period of interim bail.

The petition is declined.

ANU MALHOTRA, J

AUGUST10, 2020/SV

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