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

Date of decision: 13th MAY, 2021

+ **BAIL APPLN. 788/2021**

JYOTI

..... Petitioner

Through Mr. Joginder Tuli, Advocate

versus

STATE NCT OF DELHI

..... Respondent

Through Ms. Kusum Dhalla, APP for the State

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J. (ORAL)

1. This petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.281/2013 dated 27.05.2013 registered at Police Station Uttam Nagar, Delhi for offences punishable under Sections 302 and 34 IPC.

2. The brief facts leading to the present petition are as under:

a) A complaint was given by one Savita Devi, wife of Raj Kumar, R/o A-52, Sainik Enclave, Vikas Nagar, Uttam Nagar, Delhi, stating that her brother Vinod who was residing at House No.57, Om Vihar Phase 1-A, Bayala Colony, Uttam Nagar, Delhi, was married to Jyoti/the petitioner herein. It is stated that the relationship between the petitioner and her husband were strained because of one Ajit/co-accused, who used to work and stay in the same house in which the

petitioner and her husband used to live. It is stated that there were frequent quarrels between husband and wife because of Ajit who also happens to be a distant relative of the petitioner. It is stated by the complainant that she used to go to her brother's house to give him food. It is stated that on 25.05.2013, the complainant went to the house of Vinod to feed him and while she was returning the petitioner herein warned her that if something were to happen to Vinod (deceased) the complainant would be held responsible. It is stated in the complaint that on the very next day i.e. on 26.05.2013, at about 4:30 in the morning petitioner's mother called the complainant and informed her that her brother had passed away and that the Police had come to their house and that the complainant should not reveal anything to the Police. It is stated in the complaint that the complainant suspected that the petitioner herein, Jyoit and the co-accused Ajit have murdered her brother.

b) MLC of the deceased was conducted vide MLC No.13029/13 and the cause of death was not specified in the MLC. The body of the deceased was sent for post-mortem. Post-mortem was conducted and the post-mortem indicated that the victim had died due to strangulation. On the basis of the post-mortem, FIR No. 281/2013 dated 27.05.2013 was registered at Police Station Uttam Nagar, Delhi for offences punishable under Sections 302 and 34 IPC. The petitioner herein and the co-accused, Ajit were arrested on 27.05.2013.

c) Disclosure statements were taken from the petitioner and the co-accused Ajit wherein they confessed to their crime.

d) Statement of the son of the petitioner under Section 161 Cr.P.C was recorded. On the basis of the material collected during the investigation charge-sheet was filed on 24.08.2013 and the case was committed to the Sessions Court. Charges have been framed. The trial has commenced and all the prosecution witnesses have been examined. The case is fixed for recording the Statement of accused under Section 313 Cr.P.C.

e) The petitioner filed an application for bail being IA No.03/2020, which was rejected by the learned Additional Session Judge-05, West Tis Hazari Courts, by an order dated 01.03.2021.

f) Thereafter the petitioner has filed the instant application for grant of bail.

3. Mr. Joginder Tuli, learned counsel for the petitioner states that the petitioner is in judicial custody now for nearly 8 years. He states that all the prosecution witnesses have been examined and the Court has to examine the petitioner under Section 313 Cr.P.C which is to be followed by the defence evidence. He would argue that since all the prosecution witnesses have been examined there is no question of tempering with the evidence. He also contends that the petitioner has right to ensure that she is properly represented and for that she has to instruct her lawyer properly to prepare a strong defence. It is also contended by the learned counsel for the petitioner that there are material contradictions in the statement of the child witness inasmuch as in Court the child deposed that Ajit caught hold of his father and the petitioner was pressing the throat of his father, though no such thing has been mentioned by him in his statement under Section 161 Cr.P.C. He would therefore, state that in view of the major contradiction in the

statement of the only eye-witness, the child witness cannot be believed and the case becomes one of circumstantial evidence. He prays that the petitioner be released on bail.

4. On the other hand, Ms. Kusum Dhalla, learned APP for the State submits that the petitioner is accused of a very heinous offence i.e. murder of her husband. She would contend that keeping in mind the gravity of the offence, the petitioner ought not to be released on bail.

5. Heard Mr. Joginder Tuli, learned counsel for the petitioner and Ms. Kusum Dhalla, learned APP for the State and perused the material on record.

6. This Court, at this juncture, does not want to enter into the merits of the case. The petitioner has spent nearly eight years in the prison, all the prosecution witnesses have been examined. The statement of the petitioner under Section 313 Cr.P.C is yet to be recorded.

7. Keeping in view the fact that the petitioner has spent eight years in prison, all the prosecution witnesses are examined and there is no possibility of the petitioner tampering with evidence or threatening any witness and also the fact that the petitioner has right to instruct her lawyer so that they can prepare a proper defence for her case. It is well established that the purpose of Section 313 Cr.P.C is to draw the attention of an accused to the specific points in the charge and in the evidence on which the prosecution claimed that the case is made out against the accused so that the accused is able to give such explanation as he/she desires to give. The purpose of Section 313 Cr.P.C is therefore to elicit a reply from the accused to ascertain his say. After the examination under Section 313 Cr.P.C the defence has a right to lead its evidence. This Court is inclined to grant bail to the petitioner

on the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of Rs.35,000/- with one surety of the like amount who should be the relative of the petitioner to the satisfaction of the Trial Court/Duty Magistrate.
- b) The petitioner shall report to the concerned Police Station once every 15 days.
- c) The petitioner is directed to give all her mobile numbers to the Investigating Officer and keep them operational at all times.
- d) The petitioner shall give her address to the IO and if she changes the address she shall intimate the same to the IO.

8. It is made clear and needless to state that the observations made in this order are only for the purpose of grant of bail and not on the merits of the case.

9. Accordingly, the bail application is disposed of with the above observations.

10. A copy of this order be transmitted to the concerned Jail Superintendent.

MAY 13, 2021

Rahul

SUBRAMONIUM PRASAD, J