



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

% **Pronounced on: 22nd July, 2022**

+ **BAIL APPLN. 1041/2022**

MONA

..... Petitioner

Through: Mr.Kanhaiya Singhal, Ms.Priyal Garg, Ms.Anisha Agarwal and Ms.Saumya Sharma, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.G.M.Farooqui, APP for State with SI Samrat

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This application under Section 439 Cr.P.C. seeking regular bail has been moved by the co-accused in FIR No.321/2013 registered under Sections 302/394/397/34 IPC at PS Crime Branch.

2. Mr.Kanhaiya Singhal, learned counsel for the applicant submitted that the applicant had been in custody since 21st August, 2013 and has been facing trial as an under trial in custody for the last more than eight years. It is submitted that there are 54 witnesses of the prosecution out of which only 31 have been examined so far. Relying on the judgment of the Supreme Court in *Umarmia Alias Mamumia Vs. State of Gujarat* (2017) 2 SCC 731. Learned counsel for the applicant submitted that the applicant be granted bail as the trial would take a long time to conclude.

3. Learned counsel for the applicant has submitted that the case of the prosecution is completely doubtful as regards the applicant's role in the



commission of the alleged offence. According to him, the recovery of articles from the cupboard of the applicant's almirah could not create any culpability. The witness PW-18 (Pintoo) was a planted witness as the story that he had come to the premises where the crime had taken place to collect some car keys was far-fetched. Moreover he had not deposed to having assisted the Police in drawing the sketch of the applicant. Thus, the identification of the applicant as the person who had supposedly handed over the keys of the car to PW-18 could not be believed.

4. Mr. G.M. Farooqui, learned APP for the State on the other hand submitted that it was the applicant who had led the co-accused to commit the crime as the deceased Bajrang Bakodia was the uncle of her husband. She had access to the house which she utilized to gain access to the co-accused to loot the house. It was the applicant who had procured a drill machine in the morning of 18th August, 2013 to break into the house as well as to break the locks of the Almirah where the jewelry was kept. PW-11 (Rajesh) had testified in court that it was the applicant who had come to borrow the drill machine from him. Subsequently, 18 items were recovered from the almirah which was kept in the room of the applicant which included one cheque book belonging to the daughter of the deceased Bajrang Bakodia containing her signed cheques. It was submitted that 18 important witnesses remained to be examined and therefore the applicant be not granted bail.

5. I have heard the submissions and perused the record. It goes without saying that the allegations against the applicant are indeed very serious. When she was about 22 or 23 years of age, she had allegedly pointed out to the house of the deceased who was her husband's uncle and had allegedly



procured the drill machine to facilitate the looting of the jewelry and cash from the house of the deceased Bajrang Bakodia. When the deceased and his driver Vinod Dubey came home when the robbery was going on they were killed as were two other servants, Bhola and Anand. The jewelry items were subsequently recovered from the almirah in the house of the applicant. The trial is yet to conclude. The prosecution no doubt will have to establish all these facts beyond reasonable doubt to prove the culpability of the applicant, for which the trial is going on.

6. For the present, what is noted is that the applicant has been in custody as an under trial for a period of 7 years, 9 months and 12 days as on 4th July, 2022. The Nominal Roll reflects this fact. It also records that the conduct of the applicant has been satisfactory over the last year. It is also to be noted that the applicant had been granted interim bail for 60 days with effect from 28th July, 2020 which was extended from time to time till 30th March, 2021 when she surrendered. Thereafter the learned MM had also released the applicant on interim bail on 23rd June, 2021 which was extended from time to time till 21st November, 2021 when she surrendered. The Investigating Officer (IO) has not reported that during this period of interim bail she had indulged in any unlawful activity or interfered with the course of the trial. The prosecution, in a period of almost nine years has been able to examine only 31 witnesses out of 54 and it is not the case of the prosecution that the applicant was somehow responsible for the delay.

7. The cited judgment being *Umarmia Alias Mamumia* (supra) has referred to the judgment of the *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731; *Shaheen Welfare Assn. v. Union of*



India, (1996) 2 SCC 616 and released an accused person facing trial under TADA, even while recording that the accused in that case was involved in serious offences and had absconded for 10 years, but keeping in view that thereafter he has remained in custody for more than 12 years and trial would not be concluded in the near future, granted in the benefit of bail.

8. Recently the Supreme Court in *Satender Kumar Antil vs. CBI* 2022 SCC OnLine SC 825 has reiterated that delay in trial and internment for a prolonged period as an under trial must be factored in while dealing with an application for bail.

9. In the case at hand, though the applicant has not undergone 50 per cent of the minimum term of imprisonment, since the charge is one for murder also, nevertheless delay is a fact that ought not to be overlooked. The trial is far from conclusion despite the lapse of nine years. The applicant has remained in custody for almost eight years.

10. In the light of the foregoing discussion, the applicant is admitted to bail on the following conditions:

- (i) The applicant shall furnish a personal bond in the sum of Rs.40,000/- with one surety in the like amount, to the satisfaction of the learned Trial Court/Duty MM.
- (ii) The applicant shall not leave NCT of Delhi without the specific permission from the learned Trial Court.
- (iii) The applicant shall appear and attend the Trial Court on each date of hearing without fail.
- (iv) The applicant shall furnish her mobile phone/landline number and residential address as well as that of her surety to the I.O./SHO concerned and both shall keep their



mobile/landline phones operational at all times during this period and in the event of any change of the same, will immediately inform the I.O./SHO.

- (v) The applicant and the surety shall not change the address without first informing the Investigating Officer (IO) and SHO as also the learned Trial Court.
- (vi) The applicant shall not directly or indirectly contact the complainant or any other witnesses to influence them and if she is found doing so, it shall be considered as an interference with the course of justice.
- (vii) The applicant shall drop a pin location on Google Maps so that the location of the applicant is available to the Investigating Officer at all times.

11. The learned Trial Court may endeavour to conclude the trial as expeditiously as possible and in the right earnest.

12. The Bail Application is accordingly disposed of.

13. A copy of this judgment be transmitted electronically to the learned Trial Court as also to the Jail Superintendent for information to the under-trial/applicant.

14. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JULY 22, 2022

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