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

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Reserved on: 04.10.2023

Pronounced on: 20.11.2023

+ BAIL APPLN. 1175/2023

RIHAN

..... Petitioner

Through: Mr. Habibur Rehman, Adv.

Versus

THE STATE (GNCTD)

.....Respondent

Through: Ms. Rupali Bandhopadya, ASC for
State with Insp. Umed Singh PS
Gokul Puri

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 CrPC seeking grant of regular bail in connection with FIR No. 377/2017 under Section 306 IPC registered at P.S. Daryaganj (Subsequently charge sheet was filed under Sections 306/201/498A/302 IPC).

2. The case of prosecution is that on 26.07.2017, information was received from GTB Hospital that Shama w/o Rihan (Petitioner) has been admitted in hospital in unconscious condition who has been declared brought dead. When the police reached the Hospital, the doctor gave the MLC No. A-5475/2017 of deceased to the police in which it was written



that patient declared brought dead in casualty on 12:15 am on 26.07.2017. It revealed that there were ligature marks on the neck of deceased.

3. During investigation, the IO recorded the statement of the father of deceased, namely, Nasiruddin in which he revealed that the deceased was not his biological daughter but she was adopted and the deceased's real father is his brother. After that biological parents of the deceased were called and the biological father of the deceased, namely, Chaman Khan, made a statement under Section 161 CrPC that the when the deceased and her brother were young, she was adopted by Nasiruddin as he did not have any offspring. The deceased was married to the petitioner. After the marriage, the deceased used to come to his home and would complain that her husband would torture her for money. When the deceased would refuse to bring money, then the petitioner used to threaten her that if she did not bring money then he will leave her and perform another marriage.

4. Thereafter, during the course of investigation, the IO obtained the Post Mortem Report No. 1123/2017 from the hospital in which doctor had opined the cause of death as asphyxia as a result of antemortem hanging and time since death is about half a day.

5. Sequel to above the statements of children as well as of the neighbor of the deceased, were recorded. The daughter of the petitioner in her statement under Section 164 CrPC stated that when at 10:30 p.m. she went upstairs her father was telling her deceased mother that he will kill her. The son of the petitioner in his statement under Section 164 CrPC stated that he saw the petitioner strangulating the deceased.

6. The learned counsel for the petitioner submits that in his statement, Chaman Khan / PW-1, who is the biological father of the deceased, stated



that he had not made any complaint of dowry demand by the petitioner to any authority. Likewise, the biological mother of the deceased, who was examined as PW-5, stated in her testimony that she had not told anyone about the cruelty of the petitioner, but the adoptive father, namely, Chaman Khan, who has been examined as PW-2, in his testimony has stated that the biological mother of the deceased told him that petitioner had asked for Rs. 5 lacs when he had visited them on the occasion of Eid. He submits that the FIR in question came to be registered at the instance of PW-2, with an allegation that petitioner had been demanding money but the testimony of PW-2 shows that his statement with regard to demand of money is only hearsay.

7. He further submits that the statement of the children of the petitioner and deceased, under Section 164 CrPC came to be recorded after about 46 days of the incident, when the said children were in the care and custody of maternal grandparents after the death of the deceased, therefore, the same cannot be taken on the face value as there is a strong possibility of the children/witnesses being tutored.

8. He submits that there is not even a single complaint of cruelty or dowry made against the petitioner as it is evident from the statements of the biological parents of the deceased.

9. He contends that the Post mortem report of the deceased also indicates that the cause of death to be asphyxia as a result of ante mortem hanging. Elaborating on his arguments, he submits that the post mortem does not support the case of the prosecution, in as much as, the case of the prosecution is that deceased was strangled by the petitioner which led to



her death. He submits that ligature marks in case of hanging would be different from that of strangulation.

10. He also contends that the charge sheet in the present case has been filed, the investigation is complete and the trial is underway, therefore, the custody of the petitioner is no more required. It is also contended that the prosecution has cited as many as 22 witnesses therefore, the conclusion of trial is likely to take long time and the petitioner is already facing incarceration since 31.07.2017. He submits that the petitioner was also granted interim bail on four occasions i.e., from 01.04.2019 to 03.04.2019; 19.03.2020 to 25.03.2020; 11.05.2020 to 27.03.2021 and 29.05.2021 to 06.04.2023, which liberty was never misused by the petitioner.

11. He submits that material public witnesses have already been examined, therefore, there is no question of any apprehension that the petitioner will try to influence the witnesses in the event he is enlarged on bail.

12. He submits that during the pendency of the present proceedings, the petitioner has got remarried and his wife is on the family way.

13. Lastly, it is submitted that the petitioner has clean antecedents and no other case is pending against him.

14. *Per contra* the learned ASC appearing on behalf of the State has argued on the lines of the Status report. She submits that the offence alleged against the petitioner is of serious nature.

15. I have heard the learned counsel for the petitioner, as well as, the learned ASC for the State and have perused the material on record.

16. Before considering the rival contentions of the parties, it is imperative to bear in mind the factors which are to be taken into account at



the time of considering a bail application. Reference may be had to the decision of the Supreme Court in *State of UP v. Amarmani Tripathi*, (2005) 8 SCC 21, where the factors to be considered in a bail application were spelled out as under:

*“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see *Prahlad Singh Bhati v. NCT, Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan* [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)*

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court



granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)"

(emphasis supplied)

17. Reference may also be had to the decision of the Supreme Court in ***“Satish Jaggi v. State of Chhattisgarh”, (2007) 11 SCC 195***, wherein the Supreme Court has held in cases of non-bailable offences, the primary factor to be taken into account while considering a bail application is the nature and the gravity of the offence. The observations read as under:

"12. Normally if the offence is non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. At the stage of granting of bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and



reliability of prosecution witnesses can only be tested during the trial."

(emphasis supplied)

18. Coming back to the facts of the present case, it is the case of the prosecution that deceased along with her husband i.e., the petitioner herein and two children were staying with the adoptive father i.e., Nasruddin/PW-2. It has come in the statement of PW-2 that at no point of time he had made any complaint as regard the alleged demand of Rs.5 lac by petitioner from him or with regard to petitioner giving beatings to the deceased. Further, it appears from the testimony of PW-2 that the statement with regard to petitioner having made demand of Rs. 5 lacs is an improvement over PW-2's statement recorded under Section 161 CrPC. PW-2 has also admitted that no quarrel had take place in his presence between them. PW-2 has also admitted that he had asked the deceased and petitioner to reside with them in his house so that they could take care of them.

19. The biological father of the deceased namely Chaman Khan, who was examined as PW-1, though in his examination in chief has stated that his daughter used to tell him that the petitioner would demand Rs. 5 lacs from her for purchasing a plot but in his cross examination he has feigned ignorance as to the date when the said demand was made by the petitioner/. He has also admitted that he did not make any complaint regarding harassment or cruelty meted out to the deceased at the hands of the petitioner.

20. The children of the petitioner who were examined as PW-6 (daughter aged about 8 years) and PW-9 (son aged about 9 years), though supported the case of the prosecution but at this stage their tutoring cannot be ruled



out as the children were in the custody of the maternal grandparents since the death of deceased on 26.07.2017 till the time their statements were recorded on 23.10.2019 and 21.05.2022, respectively.

21. That apart, the doctor in the post mortem has opined that the cause of death is asphyxia as a result of ante mortem hanging. It is not the opinion of the doctor that the death has occurred on account of strangulation. Needless to say, the ligature marks in case of hanging would be different than those of strangulation. The distinction between suicidal death and homicidal death due asphyxia has been brought out in **Modi's "A Textbook of Medical Jurisprudence and Toxicology" Vol 26 "Chapter 20 Deaths from Asphyxia"** in following terms:

S. No.	Suicidal usually	Homicidal usually
1.	No signs of struggle	Signs of struggle
2.	Ligature found in position, above thyroid cartilage, mark incomplete, directed obliquely upward with a gap indicating position of the knot with no damage to the skin in the gap	Ligature may not be with the body but when found, usually completely encircles the neck horizontally below thyroid cartilage. There may be more than one turn of ligature and there is always some damage to skin underneath.
3.	Abrasions and bruises around ligature mark rare	Abrasions and bruises around ligature mark common
4.	Dissection of ligature mark reveals a dry and glistening white band of subcutaneous tissue	Dissection of ligature mark reveals ecchymosed subcutaneous tissue
5.	Neck usually stretched	Neck not stretched
6.	Fracture of hyoid rare	Fracture of hyoid not rare in throttling



		cases (in the aged)
7.	Fracture of laryngeal cartilages and tracheal rings rare	Fracture of laryngeal cartilages and tracheal rings common
8.	Injury to carotid arteries in cases with a long drop	Injury to carotid arteries common
9.	Injury to muscles of neck rare	Injury to muscles of neck common
10.	Fracture dislocation of cervical vertebrae common in judicial hanging	Fracture dislocation of cervical vertebrae rare
11.	Saliva running out of the angle of the mouth vertically down along the neck and front of chest and abdomen	Saliva may not have escaped from mouth but if so, usually blood tinged and may not be vertically down
12.	External signs of asphyxia may not be well marked when death is due to any cause other than asphyxia	External signs of asphyxia usually well marked because of considerable violence that is commonly employed
13.	Face usually pale	Face congested and with pronounced petechiae.
14.	Bleeding from nose and mouth very rare	Bleeding from nose and mouth common.

22. In view of the categorical opinion of the doctor that the cause of death is asphyxia as a result of antemortem hanging, it *prima facie*, appears that the medical evidence is not in accord with the prosecution version.

23. However, the probative value of evidence which has come on record and the credibility of the witnesses will be seen by the trial court at the stage of trial, but at this juncture this Court cannot shut its eyes to the



above noted gaps in the evidence which have come on record, which tilts the balance in favour of the petitioner for grant of bail.

24. Out of 22 witnesses cited by the prosecution, only public witnesses have been examined till date, therefore, the good number of witnesses are yet to be examined which will inevitably lead to a protracted trial.

25. Further, the petitioner is in custody for more than two and a half years. The investigation being complete, in the facts and circumstances of the present case, no useful purpose will be served in keeping the petitioner in judicial custody. It is not the case of the prosecution in the status report that the petitioner has a criminal record or he is a flight risk. Furthermore, material witnesses having being examined, there is no possibility of petitioner influencing them in the event of the being enlarged on bail.

26. Considering the above factors in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/Jail Superintendent/Duty Magistrate, further subject to the following conditions: -

- a) Petitioner will not leave the city without prior permission of the Court.
- b) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- c) Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.



27. The petition is disposed of.
28. Nothing stated herein shall be deemed to be an expression of opinion on the merits of the case of the respective parties.
29. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
30. Order *dasti* under the signatures of the Court Master.
31. Order be uploaded on the website of the Court forthwith.

VIKAS MAHAJAN, J

NOVEMBER 20, 2023
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