



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

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Reserved on : 14.09.2023

Pronounced on : 17.10.2023

+ **BAIL APPLN. 1210/2023**

ANITA CHETRI

..... Petitioner

Through: Mr. Sudhir Batra and Mr. Rohit
Khanna, Advocates.

versus

STATE NCT OF DELHI

.... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with Insp. Jagjeewan Ram, PS Amar
Colony.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C for grant of regular bail in case FIR No. 294/2019 U/s 302 IPC registered at Police Station Amar Colony.
2. Briefly stated, the facts of the present case are that on 10.09.2019 at about 2:20 p.m, one A.K. Dutta R/o Old Double Storey Lajpat Nagar-IV, Delhi made a telephonic call at PS Amar Colony and informed that one person is lying dead in his rented accommodation. The said information was recorded vide DD No. 28 B dated 10.09.2019. On receiving the call, police team rushed to the spot and on reaching there, dead body of a male was



found lying on the 3rd floor of the building inside the room. Sharp cut was found on the neck of the deceased and blood was oozing out from the body. On enquiry the identity of the deceased was revealed as Sunil who was residing at the said floor with his live-in-partner Anita (present petitioner). Accordingly, a case FIR No. 294/2019 U/s 302 IPC was registered at PS Amar Colony and investigation went underway.

3. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, perused the Status Report and also perused the records of the case.

4. It is submitted by the Ld. counsel for the petitioner that the petitioner is a lady and is in J.C. since 19.09.2019 and she has been falsely implicated. It is further submitted that there is not even an iota of evidence against the petitioner in regard to the conspiracy alleged to have been hatched by her alongwith the co-accused to eliminate Sunil (since deceased). It is further submitted that all the public witnesses have been examined and they have not supported the case of the prosecution.

5. It is further submitted by the Ld. counsel for the petitioner that the petitioner was living with one Sunil (since deceased) in a live in relationship at Amar Colony and some unknown person had murdered him. It is further submitted by the Ld. counsel for the petitioner that the petitioner was not present at the time of the incident at the crime scene. It is further submitted that the prosecution has cited 41 witnesses and trial will take a long time. Ld. counsel for the petitioner has relied upon *Tapan Dass Vs. Union of India, Special Leave to Appeal (Crl.) No. 5617/21 decided by the Hon'ble Supreme Court on 07.10.2021* and *Simorna Vs. State of Rajasthan, Bail*



Application No. 4909/2022 decided by Hon'ble High Court of Rajasthan on 11.05.2022.

6. On the other hand, Ld. APP for the State has vehemently opposed the bail application and has argued on the lines of the Status Report. It is further submitted by the Ld. APP that the petitioner was living with one Sunil (since deceased) at Amar Colony and the statement of the petitioner was recorded by the IO and she has stated that on the night of the incident i.e. 09.09.2019 at around 11:30 p.m she had hired a CAB and left for her friend's house at Noida. It is further submitted by the Ld. APP that when the petitioner left the house as stated by the petitioner herself Sunil (since deceased) was present and he was alone.

7. It is further submitted by the Ld. APP that the petitioner had talked twice with Sunil (since deceased) from her friend's house at Noida where she was staying at that night and he further submitted that as per Section 106 of the Indian Evidence Act, there is a presumption against the petitioner as according to the petitioner she and deceased Sunil were living in the same house and deceased Sunil was alive when she had left the house. It is further submitted by the Ld. APP that the petitioner in conspiracy with other co-accused persons has eliminated Sunil. It is further submitted by the Ld. APP that neither there is any forceful entry in the house where deceased Sunil was residing nor there are any allegations of robbery or dacoity.

8. In the present case, as per the case of the petitioner herself deceased Sunil was alive when she had left the house and she had even talked to him during the intervening night of 09/10-09-2019 and they were living in the



said house for almost last 1 year and no robbery or dacoity was committed in the said house on the date of the incident.

9. It is pertinent to mention here as argued by the Ld. APP that there is a presumption against the petitioner U/s 106 of the Indian Evidence Act. There is no forceful entry in the house. There are no allegations that any articles have been looted from the house. Deceased Sunil was alive when the petitioner had left his company and as per the case of the prosecution, the petitioner in conspiracy with her brother and one relative had eliminated Sunil as he was not letting her go and was not allowing her to put an end to the live in relationship.

10. One of the contention of the Ld. counsel for the petitioner is that the public witnesses have been examined and they have not supported the case of the prosecution. As far as this contention of the Ld. counsel for the petitioner is concerned, the same does not cut much ice at this stage, as this is not the stage to deeply analyze the testimonies of the witnesses and to draw inconsistencies between the testimonies of the various witnesses examined by the prosecution as it might prejudice the case of either of the parties and it is also to be noted that even if the testimony of the hostile witness cannot be discarded in toto.

11. As far as the judgment "*Simorna Vs. State of Rajasthan*" (*supra*) relied upon by the Ld. counsel for the petitioner is concerned, in that particular case, the accused was a lady and she had a 3 year old child to take care of but in the instant case, though, the petitioner is having a child but as per the testimony of her husband who has been examined as



PW-4, she had even left the child and started living with Sunil (since deceased) and she is not supporting any child as her child is living with her estranged husband. Therefore, in these facts and circumstances, no ground for bail is made out. The bail application is, therefore, dismissed. However, the Ld. Trial Court to dispose of this case as expeditiously as possible.

12. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

OCTOBER 17, 2023

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