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

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Judgment delivered on: 16.10.2023

+ **BAIL APPLN. 1560/2023**

PANKAJ DAANG

..... Petitioner

Through: Mr. Rajesh Anand and Mr. Gaurav
Adlakha, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Richa Dhawan, APP for State
with SI Avaneesh Kumar, PS Jagat
Puri.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in FIR No. 53/2020 under Sections 384/306/34 IPC registered at P.S. Jagatpuri. Sections 67/67A Information Technology Act, 2002 were added in the charge-sheet.
2. *Vide* order dated 11.05.2023, notice was issued in the bail application of the petitioner and the State was directed to file a Status Report.
3. The case of the prosecution as borne out from the charge-sheet is that information was received by the police through telephone that the daughter of the caller had committed suicide by hanging herself from a fan. ASI Rajesh Kumar along with Head Constable Manoj Kumar and Const. Anil Kumar arrived at the spot and found the deceased hanging from a fan by



making a noose out of her scarf. Thereafter, the deceased was brought to Dr. Hedgewar hospital under the supervision of W/Const. Pinki, where the doctor mentioned A/H/O hanging as stated by the police and she was declared brought dead.

4. During investigation, the statement of the mother of the deceased/complainant was recorded under Section 161 Cr.P.C, wherein she disclosed that her daughter/deceased was friends with the petitioner and the deceased had revealed to the complainant that the petitioner along with his mother (co-accused) had made explicit videos of her and were demanding money, otherwise they shall release these videos to the public. It was further disclosed by the complainant that she gave Rs. 50,000/- to the deceased and the complainant took the deceased to the house of the petitioner, where the said money was handed over to the petitioner in presence of his mother. On the request of the complainant, it was promised by the accused persons that they shall not act upon the said video and the complainant felt that the incident was put to rest.

5. It was also stated by the complainant in her statement that assuming that the aforesaid incident had been put to rest, the engagement of the deceased was fixed for 24.02.2020, however, the accused persons again raised a demand for money amounting to Rs. 10 lacs and threatened that if the demand was not met, the video shall be released to the public. Thereafter, the husband and brother-in-law of the complainant namely, Amarnath Dhingra approached the petitioner at his house and the petitioner again reassured that he shall not act on the video, however, it was disclosed by the complainant that on the day of the engagement, both the accused persons reached at the venue of the engagement and stood opposite the



engagement marquee at Punjabi Cafe Restaurant, Guru Angad Nagar and telephoned the husband of the complainant and threatened that if their demand was not met, they shall not let the deceased get engaged.

6. It is also the case of the prosecution that once the groom along with his family had left the venue, the petitioner entered the venue and started talking to the deceased and informed her that if the demand of the accused persons is not met, the accused persons shall inform the fiancé of the deceased about the explicit video in his possession.

7. It was stated by the complainant that the petitioner did exactly as threatened and sent the explicit video on the mobile phone of the cousin brother of the petitioner's fiancé. Thereafter, the fiancé of the deceased broke off the engagement and due to this the deceased was disturbed and had taken her life. It was also stated by the complainant that the petitioner also used to wander in the street and had done the same on the date of the incident as well.

8. On the aforesaid allegations, the present FIR came to be registered on 11.03.2020 and the petitioner was arrested on 12.03.2020. The petitioner was released on interim bail on 11.05.2021 in terms of the recommendations of the High Powered Committee passed during the outbreak of COVID-19 pandemic. It is stated that in terms of the directions passed by the Apex Court in *Suo Moto Writ (C) No. 01/2020* in the matter of *Re: Contagion of COVID-19 Virus in Prisons* the petitioner had surrendered on 07.04.2023 and is presently lodged in Mandoli Jail.

9. Mr. Rajesh Anand, learned counsel appearing on behalf of the petitioner at the outset submits that the petitioner did not violate the terms of the interim bail and complied with the terms thereof in letter and spirit. It



was also submitted that the petitioner had regularly reported to the local police station and regularly appeared before the learned Trial Court.

10. It was also contended on behalf of the petitioner that the co-accused in the matter i.e. the mother of the petitioner has been granted regular bail *vide* order dated 07.04.2022 passed by the learned Trial Court. The learned counsel submitted that the roles of the co-accused being similar, the petitioner is entitled to be granted regular bail on the basis of parity.

11. He submits that the prosecution has alleged that the petitioner along with his mother had made obscene videos of the deceased, but no such video has seen the light of the day nor the same been made part of the charge-sheet. This according to the learned counsel for the petitioner makes the entire version of the prosecution doubtful and this lacuna in the case of the prosecution shall inure to the benefit of the petitioner.

12. Referring to the merits of the present case, it was submitted by the learned counsel that it is the prosecution's case that before her unfortunate and untimely demise, the deceased had filed a complaint dated 08.03.2020 bearing DD No. 38A with P.S. Jagatpuri, however no effort was made by the investigating officer to examine the deceased during her lifetime. In fact, it has been admitted by the elder sister of the deceased that the deceased was not the author of the complaint and the complaint was written by her.

13. It was also submitted by the learned counsel that the correct facts of the present case are that the petitioner and the deceased were in a love relationship with one another for about 2 years. It was submitted that that the mother of the petitioner along with Ms. Sudesh Wig had approached the family of the deceased for the marriage of the deceased with the petitioner. Everyone in the family of the deceased except the father of the deceased had



agreed to the marriage of the petitioner with the deceased as the deceased was '*manglik*' but the petitioner was not. The father of the petitioner wanted a '*manglik*' boy for the deceased and due to the refusal of the father of the deceased to the union, the deceased was upset. For this purpose, the learned counsel has relied upon the evidence of the complainant, who was examined as PW-1 before the learned Trial Court.

14. He also submitted that the petitioner was aware that the deceased was '*manglik*' and this issue had been discussed between the parties, thereafter, on 19.06.2019, the complainant, deceased, the elder sister of the deceased along with the petitioner and his family members went to Ujjain Mahakal, Madhya Pradesh for performing the pooja of *Mangal Dosh* of the deceased. For this purpose, the learned counsel has drawn the attention of the Court to train tickets and photographs of the parties, which have been annexed as Annexure P-10 (colly) to the present petition.

15. Further, referring to the evidence of the complainant, it was submitted that the witness had admitted that she had never visited the house of the petitioner. This according to the learned counsel falsifies the prosecution's case that the complainant had paid Rs. 50,000/- to the petitioner at his home in the presence of his mother.

16. He submitted that the charge-sheet in the present case has been filed and investigation *qua* the petitioner is complete, therefore, no useful purpose would be served in keeping the petitioner behind bars. Further, a total of 30 witnesses are cited to be examined in the present case and the trial is going to take considerable time.

17. Lastly, it is submitted by the learned counsel that the petitioner has clean antecedents and no other case is pending against him.



18. It is in the backdrop of the aforesaid facts and circumstances, it has been urged by Mr. Anand that the petitioner be enlarged on bail.

19. *Per contra*, the learned APP appearing on behalf of the State has argued that the present petitioner has been accused of a grave and serious offence, therefore, he may not be enlarged on bail. She further submitted that the petitioner is the main accused in the matter and material witnesses are yet to be examined, therefore, there is a possibility of petitioner influencing the witness, if enlarged on bail.

ANALYSIS

20. I have heard the learned counsel for the petitioner as well as the learned APP appearing on behalf of the State and perused the material on record.

21. At the outset, it is rather imperative to note that the complainant/PW-1 during her evidence has categorically admitted that the petitioner and the deceased were in a love relationship and that she was agreeable to their marriage. She further admits that it was her husband who was not agreeing to their union. This version of the complainant is conspicuously missing from the FIR as well as her statement recorded under Section 161 Cr.P.C. It has further been admitted by the complainant that the deceased was upset after the husband of complainant did not agree to the union of the deceased with the petitioner. It has also been voluntarily stated by the complainant that despite the proposal of marriage being refused by the husband of the complainant, the deceased was still meeting the petitioner. The testimony of the complainant recorded on 15.09.2023 is relevant in this regard, which reads as under:-

"It is correct that during the year 2020, our families inter



se relationship with the family of the accused Pankaj were cordial.

*It is correct that in the second week of January 2020, accused Alka Daang along with a common family friend Ms. Sudesh Vij had visited our house with the marriage proposal of accused Pankaj with my deceased daughter. At that time, my husband and myself were present at our house. My deceased daughter was manglik and Pankaj was not manglik. My husband refused the marriage proposal as Pankaj was not manglik. We wanted a manglik boy for our deceased daughter. **It is correct that accused Alka Daang and Ms. Sudesh Vij pleaded us to accept the marriage proposal by stating that the mangal dosh of my deceased daughter Geetika was already removed at Ujjain Mahakal Temple last year in my presence. My husband was adamant that he will marry Geetika with a manglik boy only. It is correct that my entire family except my husband were aware of this fact that Pankaj and Geetika were in relationship. It is correct that accused Alka Daang and Ms. Sudesh Vij pleaded to us that both Pankaj and my deceased daughter Geetika loved each other and hence we should not reject the marriage proposal else both of them would be heart broken.***

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My deceased daughter Geetika wanted to marry Pankaj and she was upset by the marriage refusal.

*After the refusal of the marriage proposal, we got the mobile number of our deceased daughter changed. **I do not know that after the said refusal of marriage proposal, my deceased daughter met accused Pankaj 2-3 times. Vol. Mili Hogi. I once tried to convince my husband to agree to marry my deceased daughter with Pankaj but he refused. As my husband was adamant, so I gave up my efforts to convince him for this marriage.***



22. Further, a perusal of cross examination of the complainant recorded on 21.11.2022 before the Trial Court also manifests that there is force in the submission of Mr. Anand, learned counsel for the petitioner that there is a contradiction in the testimony of the complainant. In her statement recorded under Section 161 Cr.P.C, she has stated that she along with the deceased went to the house of the petitioner and Rs. 50,000/- was handed over to the petitioner by the deceased in the presence of his mother (co-accused), whereas, it has been admitted by the complainant that she had not entered the house of the petitioner to handover Rs. 50,000/- as claimed by the petitioner in her statement recorded under Section 161 Cr.P.C. The relevant part of the cross examination of the complainant reads as under:-

"I do not remember the exact date but on one day, I a/w my daughter Geetika went to the house of accused Pankaj Daang which is situated in a street adjoining to temple. Khureji. My daughter Geetika went inside his house and handed over the amount of Rs. 50,000/- to accused Pankaj Daang."

23. It is trite that detailed and elaborate appreciation of evidence cannot be undertaken at the stage of considering a bail application. However, for the limited purpose of seeing whether there exists a *prima facie* case in favour of the accused warranting grant of bail, the evidence can be looked into for indicating reasons therefor. Reference may be had to the observations of the Supreme Court in *Lt. Col. Prasad Shrikant Purohit v. State of Maharastra*, (2018) 11 SCC 458, which read as under:-

"29. 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 nonapplication 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."*

24. It is also trite law that the High Court while examining a bail application is also bound to consider the statements which are recorded under Section 161 Cr.P.C., reference in this regard may be had to the judgment of the Hon'ble Supreme Court in *Salim Khan v. Sanjai Singh*, (2002) 9 SCC 670, the relevant part of which reads as under:-

"The High Court at this stage is duty-bound to consider all the statements recorded under Section 161 CrPC, examine the gravity of the offence and also examine the question of possibility of the accused tampering with the evidence and possibility of getting the attendance of the accused during trial and then would be entitled to grant bail to an accused."

25. The attention of the Court was also drawn to the statements of Mr. Harish Minocha (father of the deceased), Mr. Amarnath Dhingra (brother-in-law of the complainant) and the elder sister of the deceased recorded under Section 161 Cr.P.C. which manifest that no demand of Rs. 10 lacs was made



on 24.02.2020 i.e. the date of engagement of the deceased, as alleged by the prosecution. The statement of Mr. Harish Minocha recorded under Section 161 Cr.P.C reads as under:-

"On 24.02.2020 during the daytime Geetika and Vinod's engagement ceremony was taking place at Punjabi Cafe Restaurant, 292 West Guru Angad Nagar. Pankaj and his mother Alka came and stood outside Punjabi Cafe. We made attempts to send them away but they remained there and after the boy's family left Pankaj and his mother began to argue with my daughter and warned of dire consequences."

26. The statement of Mr. Amarnath Dhingra recorded under Section 161 Cr.P.C read as under:-

"On 24.02.2020 during daytime the engagement ceremony of Vinod and Geetika was to take place at Punjabi Cafe Restaurant, West Guru Angad Nagar. Pankaj and his mother Alka came and stood outside Punjabi Cafe. We made attempts to send them away but they remained there and after the boy's family left Pankaj and his mother began to argue with my daughter and warned of dire consequences."

27. The statement of the elder sister of the deceased recorded under Section 161 Cr.P.C reads as under:-

" On 24.02.2020 on the day of engagement Pankaj and his mother had stood in front of Punjabi cafe and after the boy's family had left Pankaj had threatened that he would tell the boy's family about his relation and also about the photographs...."

28. A perusal of the above statements makes it amply clear that although it has been alleged by the complainant that a telephonic call was made by the accused persons to her husband/father of the deceased demanding a sum of Rs. 10 lakhs but the same does not find any mention in statement of the



her husband/father of the deceased recorded under Section 161 Cr.P.C, nor the other witnesses have made statement to that effect.

29. At this stage, this Court cannot shut its eyes to the improvements, inconsistencies or contradictions in the testimony of the complainant who has been examined as PW-1 as well as in the aforementioned statements of other witnesses, which may have the potential of making a dent into the case of the prosecution to an extent. However, the evidentiary value of the testimony of PW-1, as well as, other evidence will be seen by the learned Trial Court at an appropriate stage.

30. Further it was also not disputed by any of the parties that the very basis of the prosecution case rests on the obscene video which has been allegedly shot by the accused persons, however, at the same time it is not in dispute that the said video has not seen the light of the day. Further, the alleged video does not form part of the charge-sheet nor any obscene video has been recovered from the possession of the petitioner or at his instance.

31. There is also no reason to believe that the petitioner shall flee from administration of justice in as much as it is not the case of the prosecution that the petitioner has violated the terms of the interim bail granted to the petitioner in terms of the guidelines issued by the High Powered Committee.

32. Further, the apprehension of the learned APP that the petitioner may influence material witnesses, the same can be dispelled by putting strict conditions. That apart all material witnesses are the close family members of the deceased.

33. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be awarded



to him. Detention is not supposed to be punitive or preventive. The seriousness of allegations or the availability of material in support thereof are not the only considerations for declining bail. Delay in the commencement and conclusion of the trial is a factor to be taken into account and the accused cannot be kept in custody for an indefinite period if the trial is not likely to be concluded within a reasonable time.¹

34. It cannot be overlooked that the petitioner has already spent about 20 months behind bars and the prosecution has cited as many as 30 witnesses, of which 29 are yet to be examined, which would inevitably lead to a protracted trial. In the given circumstances, no useful purpose will be served in keeping the petitioner incarcerated.

35. Further, it is not in dispute that the antecedents of the petitioner are clean. The petitioner, was aged about 25 years at the time of the incident. Keeping a young boy in jail in the company of hardened criminals would do more harm than good to him.

36. Considering the above-discussed circumstances, I am of the view that the petitioner is entitled to grant of regular bail pending trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 25,000/- with on surety of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions:

- (i) Petitioner shall surrender his Passport, if any, before the Trial Court at the time of furnishing bail bond/surety bond.
- (ii) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.

¹ Vinod Bhandari v. State of Madhya Pradesh, (2015) 11 SCC 502.



(iii) Petitioner shall provide all his mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating officer concerned.

(iv) Petitioner shall not directly or indirectly, make any inducement, threat or promise to the witness with the facts of the present case.

37. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

38. The petition stands disposed of.

39. Copy of the order be forwarded to the concerned Jail superintendent for necessary information and compliance.

40. Order *dasti* under the signatures of the Court Master.

41. Order be uploaded on the website of the Court.

VIKAS MAHAJAN, J

OCTOBER 16, 2023
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