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

*Reserved on: 27.09.2023
Pronounced on: 20.11.2023*

+ **BAIL APPLN. 1938/2023**

NAVEEN UPPAL @ SUNNY

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. and
Mr.Pawash Piyush, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Richa Dhawan, APP with Insp.
Nitesh Bhardwaj, PS Maurice Nagar

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in FIR No. 106/2016 under Section 302 IPC, 1860 read with Sections 25/27/54/59 Arms Act, 1959 registered at Police Station Maurice Nagar.
2. *Vide* order dated 01.06.2023, notice was issued in the bail application and the State was directed to file a Status Report. The State has filed Status Reports dated 14.08.2023 and 16.09.2023, which are on record.
3. The case of the prosecution as borne from the status reports is that on 10.05.216, information was received from the PCR to the effect that one Sunny (petitioner herein) had informed that he is going to commit suicide



and a lady who was also with him had shot herself. The said information was recorded *vide* DD No. 26-A and was entrusted to SI Sandeep for investigation.

4. On reaching Hindu College, one Ford Eco Sport car bearing registration no. DL 86 AK 8361 was found. On the driver seat, one person was found sitting while on co-driver/passenger seat, a lady was lying who was found to be dead. On enquiry, the person sitting on the driver seat disclosed his name as Naveen Uppal @ Sunny (petitioner herein) and he informed the name of the lady as Anjali Devi. The body of Anjali Devi was sent to hospital, where she was declared as brought dead.

5. During enquiry, it was revealed that the petitioner and the deceased were in a relationship for the last several years. The deceased was married and had children, whereas, the petitioner herein was married to another lady. It is the case of the prosecution that the petitioner told the deceased to leave him and when the deceased refused, the petitioner shot the deceased.

6. With the aforesaid allegations, the present FIR came to be registered on 11.05.2016 and the petitioner was arrested on 11.05.2016 itself.

7. Mr. Mohit Mathur, learned Senior Counsel for the petitioner at the outset submits that the petitioner is in custody since 11.05.2016. He further submits that the petitioner was granted the benefit of interim bail as per the recommendations of the High Powered Committee and has surrendered in jail on 07.04.2023. It was urged by the learned senior counsel that the petitioner has been enlarged on interim bail on six different occasions *vide* orders dated 17.04.217, 04.06.218, 27.07.2018, 04.02.2019, 13.08.219 and 22.06.2020 and the said concession was not misused by the petitioner. He



further submits that the prosecution has sought to examine 64 witnesses and the petitioner may not be kept in custody till the conclusion of trial, which is not likely to be concluded anytime soon.

8. On the merits of the case, Mr. Mathur submits that as a matter of fact the petitioner and the deceased were in a relationship since many years. In January, 2016 the petitioner was engaged to another lady, against his wishes and under the pressure of his family his marriage was performed on 24.04.2016 i.e. 15 days prior to the incident. He submits that both the petitioner and the deceased were extremely disturbed by the aforesaid events and had jointly planned to end their life together by committing suicide. According to Mr. Mathur, the factum of relationship between the petitioner and the deceased is well established from the material on record. To buttress his contention, he placed reliance on the testimony of the son of the deceased, who has been examined as PW-23.

9. He submits that pursuant to the suicide pact, the deceased had shot herself and when the petitioner tried to shoot himself, the bullet got stuck in the chamber of the pistol. This according to Mr. Mathur, is clearly borne out from the testimony of PW-7, ASI Tej Singh, who produced the PCR call book before the Ld. Trial Court wherein it has been clearly recorded that the petitioner and the deceased had agreed to commit suicide. Reliance in this regard is also placed on the seizure memo prepared by the IO to contend that the seizure memo clearly mentions that the magazine of the pistol was found empty and one live cartridge was found in the chamber of the pistol. The attention of the Court was also drawn to the FSL report which records “many



attempts have been made to test fire exhibit 9mm cartridge marked A1, but resulted into misfire.”

10. Further, it was submitted that after the call was made by the petitioner, he did not try to abscond from the place of the offence but rather had gone to the location where he was asked to go by SHO P.S. Maurice Nagar. Reliance in this regard is placed on the statement of the SHO P.S. Maurice Nagar recorded under Section 161 of the Cr.P.C, to contend that the petitioner had followed her instructions and reached the spot near Hindu College.

11. Mr. Mathur submitted that it is further case of the prosecution that the petitioner had caused the death of the deceased as the petitioner wanted to leave the deceased but the deceased was not agreeable to it and that the deceased had advanced a loan of Rs. 5 lakhs to the petitioner. According to Mr. Mathur, the case of the prosecution is belied from the conversations between the petitioner and the deceased which have been recovered from the phones of the parties. The attention of the Court was drawn to the transcript of the recording dated 09.05.2016 i.e. the day immediately prior to the date of the alleged incident i.e. 10.05.2016 to contend that on the said date the deceased and the petitioner were conversing to the effect that they shall commit suicide the next day.

12. It is submitted by Mr. Mathur that the antecedents of the petitioner are clean in as much as no other case except the present case is pending against the petitioner. Further, it was urged that no recovery has to be made from the petitioner as the prosecution has filed the chargesheet as well as the supplementary chargesheet.



13. Lastly, it is submitted that all public witnesses have been examined by the prosecution and only official/police witnesses are left to be examined and thus there can be no apprehension on part of the prosecution that the petitioner may influence witnesses.

14. In the backdrop of the aforesaid facts and circumstances, it has been urged by Mr. Mathur that the petitioner be enlarged on bail.

15. *Per contra*, the learned APP appearing on behalf of the State has argued on the lines of the Status Report. She submits that the petitioner has been accused of a grave and serious offence, therefore, he may not be enlarged on bail. She submits that the petitioner was found sitting on the driver seat of the car and the dead body of the deceased was lying on the front left side seat and the petitioner was also found in possession of weapon of offence i.e. country made pistol and one live cartridge without any permit or licence. She further submits that as per the MLC, the cause of death was found to be craniocerebral damage consequent to a fire arm injury.

16. She also submits that on 13.03.2016 and 14.03.2016, the location of the petitioner was found to be of Uttar Pradesh West, which confirms that the petitioner had travelled to purchase the illegal weapon from Akbarpur, Uttar Pradesh. The learned APP also relied upon various audio recordings (annexed with the status report) which have been recovered from the phone of the petitioner as well as the deceased, the details of which are as follows:-

- a) *Record 0002 being a recording between the petitioner, his mother namely Veena Uppal, the deceased and the deceased's husband* - It is contended that in this recording it is revealed that the deceased had given Rs. 5 lacs to the accused and the mother of the petitioner as well as the petitioner are agreeing to the terms of the return of the said amount.



b) *Record 003 is a recorded conversation between the deceased and the petitioner, whereas, Record 0007 is a conversation between the father of the accused and the deceased*
- It is contended that the said recordings clearly manifest that the deceased was not happy with the marriage of the petitioner.

17. Lastly, it is submitted by the learned APP appearing on behalf of the State that during the pendency of the trial of the present case, the husband of the deceased namely, Sanjay Kumar made a complaint against the present petitioner alleging that the petitioner had threatened the witness, whilst the petitioner was in judicial custody.

ANALYSIS

18. I have heard the learned Senior Counsel for the petitioner as well as the learned APP for the State and perused the material on record.

19. *Prima facie* there is substance in Mr. Mathur's submission that the petitioner and the deceased were in a relationship as is evident from the following extract from the testimony of deceased's husband, namely Sanjay Kumar, who was examined as PW-17 on 29.08.2018:

"Accused Sunny present in the court today (correctly identified) was in touch with my wife (deceased) and they also used to long talk with each other on mobile phones. They were in touch from the last 7-8 years from the date of incident and they have developed relationship with each other. Accused started coming at my house in my absence and when I came to know about the same I had asked the accused not to come at my home in my absence. On few the occasions, he came to my house in my presence and I have asked accused not to come at my house. On number of occasions, accused took my wife out of the home in my absence. Initially, I had gone with accused out of home, but when I came to know about his conduct with regard to my wife, I avoided to go with him."



20. It is also the case of the prosecution in the supplementary chargesheet that many photographs were recovered from the phone of the deceased which showed the close relations between the petitioner and the deceased. The relevant part of the supplementary chargesheet reads as under:-

“On examination of report it has been observed that mobile phone Samsung marked found in laboratory as MP1, containing two SIM card marked as SC1 & SC2 and one memory card marked as MC1 which was in use with accused Naveen Uppal @ Sunny addressed under column No. 11 and mobile phone Motorola marked in laboratory as MP3 which was being used deceased Anjali and in this mobile phone there are many photographs of accused Naveen Uppal, deceased Anjali and her baby girl child Roas taken in family formation which all established closed association in between them.”

(Emphasis supplied)

21. Even the son of the deceased in his examination in-chief recorded on 17.04.2017, has admitted the close relationship between the petitioner and his family. The relevant part thereof reads as under:-

“Accused was neighbor of my mausi. My father and my mother also used to visit the house of my mausi. Since the accused used to visit the house of my mausi, me and my parents came in contact with accused Naveen and we all started talking to him. The Accused also started visiting our house at Sector 24 Rohini. We started celebrating the festivals together. We used to go for outing together as we developed close relation with each other.”

22. It thus, appears that the petitioner and the deceased were in a cordial relationship and families of the petitioner and the deceased were known to one another. In this view of the matter, the possibility of the petitioner and



the deceased being involved in a consensual romantic relationship cannot be ruled out, at this stage.

23. Notably, the defense of the petitioner from the very inception has been that petitioner and the deceased were in a love relationship and they had entered into a suicide pact as petitioner's parents got him married to some other woman against his wishes. This is also borne out from the following extract of the testimony of ASI Tej Singh, examined as PW-7, who was the first responder:

“Today I have brought the PCR Call Book (Wireless log & Diary). As per the register brought by me the first call in the present case was received by me at 8:26 am on 10.05.2016. The entry was made by me in my handwriting at page no.111 in PCR Call Book (Wireless log and Diary). At the request of Ld. Defence counsel, photocopy of the said entry is taken on record which is Ex.PW7/DA (OSR). I do not remember if senior officer had interrogated the accused at the spot in my presence. (Vol. I had offered water to the accused and later on I removed the dead body of deceased Anjali. I remained at the spot approximately for about 1 hour. During this time I came to know that accused Naveen Uppal had informed that he was having love affair with Anjali but his parents had got married against his wishes with some other girl and today he i.e. accused Naveen along with Anjali was roaming in the area of Delhi University around 7:40/7:45 pm and Anjali had shot herself with desi katta and he i.e. accused Naveen Uppal had also tried to shot himself with desi katta but bullet struck (fans gayi) and Anjali fell down on the left front seat of the car)”

(Emphasis Supplied)

24. *Prima facie* there also appears to be merit in the submission of the learned senior counsel for the petitioner that pursuant to the suicide pact between the petitioner and the deceased, after the deceased committed suicide when the petitioner tried to commit suicide, the bullet got stuck and



the country made pistol did not fire. The report of the FSL which has been filed along with the supplementary charge sheet clearly states that although the country made pistol was found to be in normal working order but the cartridge recovered from the petitioner did not fire despite many attempts. It is also not the case of the prosecution that any other cartridge was recovered from the petitioner. The relevant part of the report reads as under:-

“RESULTS OF EXAMINATION/OPINION

- (1) *The exhibit marked F1 is a firearm as defined in Arms Act. It an improvised pistol, capable of chambering and firing standard 9mm ammunition.*
- (2) *Four 9mm cartridges received in laboratory for test firing and two 9mm cartridges taken from laboratory stock were chambered and successful test fired through exhibit improvised pistol marked F1 in the laboratory. Hence, it is opined that exhibit improvised pistol marked F1 is in normal working order.*
- (3) *Many attempts have been made to test fire exhibit 9mm cartridge marked A1, but resulted into misfire.”*

(Emphasis Supplied)

25. One of the motives attributed to the petitioner by the prosecution is that the deceased and her husband had advanced some money to the petitioner, which he was not returning. However, a perusal of the transcript of the conversation relied upon by the learned APP, shows that the petitioner as well as his mother, namely Veena Uppal, had already agreed to return the money, which raises a doubt about the motive attributed to the petitioner for committing the murder of the deceased. Similarly, the petitioner also expressed his fondness for the deceased. This contradicts the prosecution version that when deceased refused to leave the petitioner, he killed her.



26. *Prima facie* there is also substance in the contention of the learned senior counsel that the transcript of the audio recording dated 09.05.2016 i.e. the day immediately prior to the date of the alleged incident i.e. 10.05.2016 shows that the petitioner and the respondent had entered into a suicide pact. A perusal of the transcript of the audio recording (annexed as Annexure-8 to the paperbook), which has not been disputed by the State in its status report, manifests that the deceased had in no uncertain terms expressed her love for the petitioner and stated to the petitioner that she cannot live without him. The deceased had also expressed her desire to not continue her life without the company of the petitioner, similarly, the petitioner also expressed his fondness for the deceased.¹ This contradicts the prosecution's version that when deceased refused to leave the petitioner, he killed her.

27. 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 Maharashtra*, (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

¹ Pages 194, 200, 201, 202 of the paperbook.



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.”*

28. Though probative and the evidentiary value of the testimonies and other evidence will be seen by the learned Trial Court at an appropriate stage, however, at this juncture while considering the petitioner’s application for bail, the possibility of the petitioner and the deceased being involved in a consensual romantic relationship and the deceased partaking in a suicide pact with petitioner and shooting herself, cannot be discounted. The testimonies of the prosecution witnesses and other evidence, which have been referred to only for limited purpose of deciding the present bail application, clearly tilts the balance in favour of granting bail to the petitioner.

29. It is not the case of the prosecution in the status report that the petitioner has jumped the interim bail granted to him on different occasions as well as the interim bail granted as per the guidelines issued by the High Powered Committee. Even otherwise, the petitioner is a permanent resident of Delhi, thus, there is no reason to believe that the petitioner will flee from administration of justice in case enlarged on bail.



30. Even the apprehension of the learned APP that the petitioner may influence material witnesses cannot be sustained, in as much as, all public witnesses stand examined.

31. Further, it cannot be overlooked that the prosecution has cited as many as 64 witnesses, out of which only 24 witnesses have been examined in the last 7 years. Needless to say, that it is going to be a protracted trial. In the given circumstances, no useful purpose will be served in keeping the petitioner behind bars. It would indeed be a travesty of justice to keep the petitioner in jail for an indefinite period for an offence which may ultimately be found not to have been committed by him, especially when there is material on record which has the prospect of probalizing the defence of the petitioner.

32. Considering the above discussed circumstances in entirety, 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. 50,000/- with two sureties of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions.

- a) Petitioner shall not leave limits of Delhi/NCR.
- b) Petitioner shall surrender his Passport, if any, before the Trial Court at the time furnishing bail bond/surety bond.
- c) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- d) Petitioner shall provide all 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.

e) Petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the present case.

33. 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.

34. The petition stands disposed of.

35. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.

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

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

VIKAS MAHAJAN, J.

NOVEMBER 20, 2023

N.S. ASWAL