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IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 31st October, 2023**

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BAIL APPLN. 2210/2023

SMT. RENU TOKAS

..... Petitioner

Through: Mr. Sunil Dalal, Senior Advocate with
Mr. Gagan Bhatnagar, Ms. Manisha S.,
Mr. Nikhil Beniwal, Mr. Tushar
Rohmetra and Mr. Ojas K., Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Aman Usman, APP for the State.
Insp. Joginder Singh and Insp. Deep
Chand, PS Vasant Vihar.
Mr. Anupam S. Sharma, Mr. Prakarsh
Airan, Ms. Harpreet Kalsi,
Mr. Abhishek Batra and
Mr. Ripudaman Sharma, Advocates for
the Complainant.

CORAM:**HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeks regular bail in case FIR No. 964/2016 under



Sections 498A/304B/302/306/34 of the Indian Penal Code, 1860 ('IPC') registered at P.S. Vasant Vihar.

2. The case of the prosecution, as per the status report dated 24.07.2023 authored by Inspector Sher Singh, SHO PS Vasant Vihar is as under:

“1. That the briefly stated facts of the case are that on 23.10.2016, a PCR call vide DD No. 15A was received a PS Vasant Vihar and after the receipt of PCR Call, police officials of Police Station Vasant Vihar reached at the spot i.e. Katwaria Sarai, New Delhi. At the spot, main door of the house was found locked, caller (husband of deceased) was not present at the spot, the phone of the caller was also found Switched off. On calling, no one responded inside the house. Access was made inside the house, after opening the lock (Kundi), nobody was found present inside the house. The door of the inside room was found open, where body of a female was found hanging from ceiling fan with the help of Chunni/ligature.

2. That during enquiry, identity of the lady was revealed as Snit. Anita Kataria and it also came to light that the elder sister of the deceased is also used to reside at Katwaria Sarai. The father of the deceased was informed regarding the incident and it was revealed that the marriage of the deceased was solemnized around 06 years back. Accordingly, as per the mandatory provision SDM, Mehrauli was informed in this regard and Executive Magistrate Shri M. K. Bharti was nominated for further proceedings and was informed accordingly.

3. That crime team was called at the spot and the spot was got inspected by the crime team and photographs of crime/place of incident were taken by the crime team from different angles. In the meantime, Smt. Santosh (mother of the deceased) and Shri Ramesh Singh (father of the deceased) reached at the spot. After inspection of the spot by crime team, body of the deceased was removed from the spot after cutting the ligature. The exhibits were lifted/collected from the spot. The body of the deceased was got preserved at AIIMS Hospital mortuary. Statements of Smt. Santosh (mother of the deceased) & Shri Ramesh Singh (father of the deceased) were recorded by

4. That on 24.10.2016, the inquest proceedings of the deceased were conducted and Post Mortem proceeding of the body of deceased was



conducted and video-graphed. During post mortem proceedings, a suicide note was also recovered from undergarment of the deceased. After PM, the deceased body was handed over to her relatives for her last rituals.

5. That after proceeding, SDM/ Mehrauli handed over his report along with the copy of statements of mother and father of the deceased and copy of the suicide note. In the suicide note deceased alleged her mother-in-law Smt. Raj Bala and sister in-law Ms. Renu behind committing her suicide and further written that under the influence of both the ladies, her husband used to beat her and had made her life miserable. Shri M.K.Bharti, Executive Magistrate, Mehrauli, New Delhi.

6. That in her statement Smt. Santosh (mother of the deceased) stated that, the marriage of her daughter Ms. Anita was solemnized with Ricky Kataria on 20.06.2010 at Vasu Garden, Chandan Holla, Delhi as per Hindu rites and at the time of marriage as per the demand, they spent sufficient amount and gave car, jewellery and other articles.

7. That in her statement, Smt. Santosh also alleged that her daughter was subjected to cruelty & harassment for demand of dowry by her mother-in-law Smt. Raj Bala, father-in-law Sukhbir Kataria, husband Ricky Kataria, sister in-law Ms. Renu Tokas, her husband brother (Nando) Sonu Tokas & cousin brother-in-law Nishu S/o Nafe Singh, as such she took this extreme step. On the statement of Smt. Santosh, a Case vide FIR No. 964/2016 dated 24.10.2016 U/S 498A/304B/34 IPC was registered at Police Station Vasant Vihar, New Delhi in respect of dowry death of Smt. Anita W/o Ricky Kataria R/o 376, Katwaria Sarai, New Delhi. During investigation of the case, raids were conducted at different places and accused namely Smt. Rajbala (Mother in-law of deceased) and the present petitioner (Renu Tokas, Sister-in-law of deceased) were arrested on dated 27.10.2016 in the present case.

8 That efforts were made to trace and arrest the co-accused Sukhbir Kataria S/o Deep Chand, Ricky Kataria, Satender @ Sonu and Nishu S/o Nafe Singh by conducting raids at all possible hide-outs of the alleged persons, but knowingly they are evading their arrest. During investigation the accused person namely Ricky Kataria was arrested on 03/11/16. On 18.11.2016, NBW of accused Sukhbir Kataria was issued from the Hon'ble Court. Accordingly, U/S 82 Cr.P.C. proceedings against the accused have



been obtained from the Hon'ble Court. During investigation of the case, the accused person Sukhbir Kataria was arrested on 20.12.2016.

9. That further, during the course of investigation, it is also revealed that earlier deceased Anita also lodged her complaint with Crime Against Women Cell (CAW Cell/SD) District South-West, New Delhi, vide her complaint No. 285, dated 05.11.2012. In the said complaint, complainant mentioned the sequence of events/dates, regarding harassment and cruelty by her husband and in-laws. Complainant had also attached her medical treatment

10. That it is pertinent to mention here that on 22.10.2016, a call was made vide DD No.54A regarding beating by in-laws was also found. The above said call was entrusted to SI Ramphal. On receipt of the same SI Ramphal reached at the spot and met the complainant Smt. Anita. During enquiry, Smt. Anita stated that she already lodged her complaint with CAW Cell/SD and she will again give her written complaint against her in-laws regarding harassment and cruelty later and further requested to forward the same to CAW Cell/SD. Later on, Smt. Anita committed suicide on the same night. All these complaints and PCR call proves she was subjected to cruelty by her husband and her in-laws.

11. That after completion of investigation, the chargesheet of the case was filed on dated 23.01.2017 u/s 498A/304B/34 IPC before Hon'ble trial Court. Hon'ble trial Court holding prima facie case being made out, framed charges against the present petitioner and other accused persons U/S 302/34 IPC in the alternative U/S 304B/34 IPC and also in the alternative U/S 306/34 IPC and also for offence U/S 498A/34 IPC. The case is pending trial before the Hon'ble trial Court and is on evidence stage and Next date of hearing is 18.08.2023.

12. That it is further submitted that in this case total 33 witnesses were cited as prosecution witnesses in main charge sheet and supplementary chargesheet qua handwriting on suicide note was also filed before the trial Court on 03.11.2018. Total 04 prosecution witnesses were cited as prosecution witnesses in the supplementary charge sheet. The total 37 prosecution witnesses were cited as prosecution witnesses including the prosecution witnesses of supplementary chargesheet."



3. Learned Senior Counsel appearing on behalf of the applicant submitted that the latter is the married sister-in-law of the deceased, who was living separately at her own matrimonial home. It was submitted that there is no material on record to establish the presence of the applicant at the house of her brother on the date of incident. It was further submitted by learned Senior Counsel for the applicant that the matrimonial discord was essentially between the deceased and her husband. It was pointed out that a complaint made by the deceased on 05.11.2012 to the Crimes Against Women Cell was subsequently, settled on 20.12.2012. It was further pointed out that even as per the suicide note, which is part of the Trial Court Record, there is no allegation with respect to the demand of dowry *qua* the present applicant or any of the other in-laws of the deceased.

4. Learned Senior Counsel appearing on behalf of the applicant submitted that *vide* order dated 05.06.2023, learned Trial Court granted bail to co-accused Rajbala, who is the mother-in-law of the deceased and is similarly placed to the present applicant. Learned Senior Counsel for the applicant drew the attention of this Court to the reasons given by the learned Trial Court for granting bail to the aforesaid co-accused Rajbala and in particular, the following paragraphs have been pointed out:

“ *** *** ”

Further it was submitted on behalf of the applicant / accused that postmortem of deceased was conducted after about 30 hours of death. Due to this reason lividity was found on the body of the deceased. In this regard in the written submissions filed by the complainant it is mentioned that in case of hanging lividity would be in the lower limbs, external genitals, lower parts of forearm hands and above the ligature mark. This description is absent in the PM report.



It is a matter of record that alternate charge for the offence punishable under Section 302 IPC was framed against all the accused persons. Vide order dated 12.03.2019 Hon'ble High Court dismissed the revision petition preferred by the accused persons against charge. As such, at this stage it is clear that prima-facie there is grave suspicion that one of the possibilities is that the deceased was murdered.

As per arguments noted above medical / technical submissions have been made by the parties regarding appearance of lividity on the dead body of the deceased as well as other signs of antemortem and postmortem hangings. **At the stage of consideration on bail it is neither feasible nor desirable to minutely scrutinized the evidence on record. As such at this stage no observation regarding the death of deceased being due to suicide or murder can / should be made.** It was argued on behalf of the applicant / accused that in the suicide note there is no mention of any dowry demand or harassment by her in-laws. It was further submitted that in the CAW Cell proceedings when the matter was compromised between the parties again there is no mention of dowry demand. The said proceedings were signed by both the parties. **In the charge-sheet the contents of the said suicide note have been noted verbatim. I have perused the said contents. In this suicide note it is mentioned by the deceased that she was committing suicide and for this suicide her mother-in-law (applicant / accused) and her nanad (Renu Tokas) are responsible. It is specifically stated that they have brainwashed Ricky Kataria husband of the deceased. In view of this it is clear that in the suicide note there are no allegations of dowry demand.** On the other hand it was argued on behalf of the complainant that the said suicide note is undated. It might have been written much before the incident. **In my considered opinion since the prosecution is relying upon this suicide note it cannot be discarded at the behest of the complainant.** It is quite possible that a person may writes suicide note but might not commit suicide immediately. However, when a person writes a suicide note, there is a high probability that the circumstances forcing the victim to commit suicide if mentioned in the suicide note are most proximate reasons for suicide.

It was argued on behalf of the applicant / accused that upon receipt of DD No. 54A dated 22.10.2016 at around 10:00 PM SI Ramphal went to the house of the deceased. I have perused the charge-sheet. As per the charge-sheet Ct. Mahipal and W/ Ct. Poonam also went along with SI Ramphal. All of them stated that the deceased told that there was no incident of physical beating. However, the deceased told them that her in-laws were harassing her and she will give complaint in writing in



CAW Cell tomorrow. This DD entry No. 54A was received at 10:00 PM on 22.10.2016. Thereafter, DD No. 15A dated 23.10.2016 was received at 05:40 AM, regarding the suicide of the deceased. In the charge-sheet it is mentioned that W/Ct. Poonam separately inquired from the deceased. Upon repeated inquiry she refused to give any statement.

In the written submissions filed by the applicant / accused it is mentioned that she was granted bail as per HPC guidelines. There are no allegations /whisper/ complaint about any misuse of liberty granted to her. During the course of arguments nothing was pointed out on behalf of the complainant to say that the applicant / accused or anyone else on her behalf has threatened or tried to influence the material witnesses or any other witnesses of this case in any manner whatsoever.

The minor children of deceased and co-accused Ricky Kataria need care and attention of some immediate family member. The father and grandfather of these children being co-accused in the present case are in judicial custody in the present case. The applicant / accused grandmother of these children is also in judicial custody. As such none of the immediate family members of these children are available to take care of these children.

Regard being had to the period of custody undergone by the applicant / accused, the fact that she is a woman and the urgent need of taking care of minor children of the deceased and co-accused Ricky Kataria, the applicant / accused Rajbala W/o Sh. Sukhbir Singh is allowed to be released on bail upon furnishing personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount and further subject to the condition that the applicant / accused will not try / influence / contact any witnesses.”

(emphasis supplied)

5. Learned Senior Counsel appearing on behalf of the applicant submitted that although the role of the applicant is similar to the aforesaid co-accused Rajbala, however, learned Trial Court, while dismissing the application for bail filed on behalf of the present applicant, *vide* order dated 05.06.2023, noted as under:-



“It was submitted on behalf of the applicant / accused that the only piece of evidence against the applicant / accused is stated to be the CCTV footage of the relevant time near the house of the deceased. As per the FSL report dated 17.07.2017 upon analysis of duplicated storage media using Exhibit DVR1 the relevant data could not be retrieved from exhibit 'HDD1'. I have perused the FSL report dated 17.07.2017 Ex. C-32-33 therein it is mentioned that the exhibit hard disk drive marked 'HDD1' was forensically duplicated on sterile storage media using TABLEAU Forensic Duplicator. On analysis of duplicated storage media the video recording could not be retrieved. This implies that the data could not be retrieved from the duplicated storage media. However, it is not clear whether the duplicating process was repeated. If not; why it was not repeated. This however cannot lead to the conclusion that there is no CCTV footage in the original recording.

It was also submitted on behalf of the applicant / accused that she was taking care of two minor children of the deceased. Vide separate order of even date the coaccused Rajbala has been granted bail. As such now the co-accused Rajbala being the grandmother of these two minor children can take care of these children.

In view of the gravity of allegations this court is not inclined to grant bail to the present applicant / accused Renu Tokas. Accordingly, the present bail application of applicant / accused Renu Tokas is dismissed.”

6. Learned Senior Counsel for the applicant submitted that the present applicant had also been released on HPC guidelines and had duly surrendered after the expiry of the same without misusing the liberty granted to her. It was further pointed out that out of 37 witnesses cited by the prosecution, approximately 9 witnesses have been examined who are the relatives of the deceased and the witnesses now before the learned Trial Court are all official in nature.
7. *Per contra*, learned APP for the State, assisted by learned counsel appearing on behalf of the complainant submitted that the allegations in the



present case are extremely grave and serious and it has come on record that the deceased was harassed over a period of time for the demand of dowry and the record placed alongwith the chargesheet reflects that a series of complaints were made by the deceased before the Crimes Against Women Cell. It was further pointed out that *vide* DD No. 54A dated 22.10.2016, it is recorded that on the intervening night of 22/23.10.2016 at 00:08:21 hours, SI Ramphal informed that the caller Anita Kataria (the deceased) said that there was a '*gharelu kaha-suni*' (verbal altercation). It was further submitted that when the police reached the spot, the husband of the deceased (who called the PCR) was not found at the spot and the main door was also bolted from the outside. It was further pointed out that nobody from the family was available at the spot on the date of the incident. It is further pointed out that even in the complaint dated 05.11.2012, made to the Crimes Against Women Cell which was subsequently compromised, the deceased in her statement recorded therein had specifically stated that she was beaten by her in-laws including the present applicant and her husband. It is further pointed out that the harassment had been continuing. It was further argued that the charges under Section 302 of the IPC have been framed *qua* the accused including present applicant, which have been upheld by this Court in a revision petition filed against the said charge. It was also argued that the suicide note is undated and therefore, it could have been written much before the incident. Finally, it was submitted that the present applicant cannot claim parity with the co-accused Rajbala as the learned Trial Court, while granting bail to the aforesaid co-accused has specifically noted that the children of the deceased had to be taken care of and therefore, the said co-accused Rajbala was granted bail.



8. Heard learned counsel for the parties and perused the record.
9. So far as the contention of learned Senior Counsel for the applicant with regard to the material showing the presence of the present applicant is concerned, on a pointed query made to the Investigating Officer, it has come on record that apart from the alleged CCTV footage which could not be retrieved from the DVR by the FSL, there is nothing on record to demonstrate the same. The suicide note which is relied upon by the prosecution is silent regarding any allegation of demand of dowry and the present applicant and mother-in-law of the deceased, i.e., Rajbala are blamed for brainwashing the husband of the deceased.
10. So far as the role of the present applicant is concerned, this Court is of the considered opinion that it is similarly placed with the co-accused Rajbala, who has been granted bail by the learned Trial Court *vide* order dated 05.06.2023. It may be further noted that the said order granting bail to the said co-accused Rajbala, learned Trial Court has extensively analysed the facts and material of the present case. The learned Trial Court has rightly noted that the contents of alleged suicide note by the deceased, which forms part of the relied upon documents by the prosecution, cannot be ignored at this stage for the purposes of considering an application for bail. Another factor which is duly noted for the purpose of present application is that the presence of the applicant on the date of incident is yet to be established which will be open to the prosecution during the course of the trial. It has been held time and again, that bail is the rule and jail is the exception. It is also well settled that at the stage of grant of bail, the Court is not required to dwell upon a detailed analysis of evidence on record as that is a matter of trial. The contention of



learned APP for the State/learned counsel for the complainant that co-accused Rajbala was granted bail on account of the fact that she had to take care of the minor children is not correct. Taking care of the minor children was only an additional factor taken into account by the learned Trial Court while granting bail to the aforesaid co-accused.

11. The Hon'ble Supreme Court in *Shri Gurbaksh Singh Sibbia and Others v. State of Punjab*, (1980) 2 SCC 565, held as under:

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. **It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in *Nagendra v. King-Emperor* [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment.** In two other cases which, significantly, are the ‘Meerut Conspiracy cases’ observations are to be found regarding the right to bail which deserve a special mention. In *K.N. Joglekar v. Emperor* [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In *Emperor v. Hutchinson* [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that



may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. **It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.”**

(emphasis supplied)

12. The Hon’ble Supreme Court, in **Gurcharan Singh and Others v. State (Delhi Administration)**, (1978) 1 SCC 118, while dealing with the powers under Section 439(1) of the Cr.P.C. held as under:

“24. Section 439(1), Cr.P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), Cr.P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment of life. It is, however, legitimate to suppose that the Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1), Cr.P.C. of the new Code. **The overriding considerations in granting of bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1), Cr.P.C. of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the**



case; of tampering with witnesses; the history of the case as well as its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.”

(emphasis supplied)

13. This Court is on the opinion that case of the present applicant is on a similar footing to that of co-accused Rajbala who has been granted bail by the learned Trial Court. The nominal roll dated 22.08.2023 received from the concerned Jail Superintendent reflects that the applicant has been in judicial custody for 03 years 11 months and 14 days. It is further noted that the applicant was released on interim bail on HPC guidelines and surrendered in time without misusing the liberty granted to her. It is also relevant to note that out of 37 witnesses cited by the prosecution, only 9 have been examined so far and the trial is likely to take time.

14. In totality of the facts and circumstances of the case, the applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith one surety of like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at House No. 91A, Prateek Market, Munirka, Delhi. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.
- ii. The applicant shall not leave India without the prior permission of the learned Trial Court.
- iii. The applicant is directed to give all her mobile numbers to the Investigating Officer and keep them operational at all times.



- iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.
 - v. The applicant shall join the investigation, as and when required by the Investigating Officer.
- 15.** The application stands disposed of along with all the pending application(s), if any.
- 16.** Needless to state, nothing stated hereinabove is an opinion on the merits of the case and is only for the purpose of the present application.
- 17.** Let a copy of this judgment be communicated to the concerned Jail Superintendent for necessary information and compliance.
- 18.** Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

OCTOBER 31, 2023/sn