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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 608/2024
RESHAM DEVI @ POONAM Petitioner
Through: Mr. Rajesh Pandey, Adv.

versus

STATE OF NCT DELHI Respondent
Through: Mr. Raghuvinder Verma, APP for
State with SI Vijay Kumar, PS.
Jaitpur.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

% **ORDER**
21.05.2024

1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.29/2019 under Sections 498A/307 IPC (subsequently charge sheet was filed under Sections 302/498A/304B/34 IPC) registered at Police Station Jaitpur.
2. The case of the prosecution is that an information was received from Safdarjung Hospital regarding admission of a female namely Smt. Baby, who was having 80% burn injuries on her body. During her treatment, Smt. Baby had passed away, however, the statement of the injured was recorded wherein she stated that her mother-in-law (petitioner herein) had burnt her with the help of Kerosene oil as she was not happy with her.
3. The learned counsel for the petitioner on the previous dates submitted that the petitioner is a cancer patient. Accordingly, the Jail Superintendent was directed to file a Status Report verifying the fact as to whether the



petitioner is cancer patient or not. A report dated 16.05.2024 has been received from the Jail Superintendent which is on record.

4. A perusal of the said report shows that the petitioner is a known case of Multiple Myeloma which is a type of cancer and is under treatment at Medical Oncology, AIIMS.

5. Besides that it is not in dispute that the petitioner is in custody since 17.02.2019.

6. Considering the fact that the petitioner is a woman aged about 49 years who is suffering from cancer, this Court is of the view that the petitioner is entitled to the benefit of first proviso to sub-section (1) of Section 437 CrPC.

7. The Hon'ble Supreme Court in ***Satender Kumar Antil vs. CBI: (2022) 10 SCC 51*** has held that the benefit of the first proviso to sub-section (1) of Section 437 CrPC could be extended to the accused under Section 438 CrPC and 439 CrPC, as well. The relevant part of the said decision reads as under:

“69. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offences are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the



prisons. There is a grave danger of their being inherited not only with poverty but with crime as well.

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78. Section 437 of the Code empowers the Magistrate to deal with all the offences while considering an application for bail with the exception of an offence punishable either with life imprisonment or death triable exclusively by the Court of Sessions. The first proviso facilitates a court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. The power under Section 439 of the Code is exercised against an order rejecting an application for bail and against an offence exclusively decided by the Court of Sessions. There cannot be a divided application of proviso to Section 437, while exercising the power under Section 439. While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors.”

(emphasis supplied)

8. Having regard to the aforesaid circumstances and long incarceration, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to her 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/CMM/Duty Magistrate, further subject to the following conditions:-



a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.

b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and she shall not change the mobile number without prior intimation to the Investigating Officer concerned.

c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

9. The petition stands disposed of.

10. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.

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

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

13. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MAY 21, 2024/dss