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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 610/2024

SMT.SUKHWANTI

.....Petitioner

Through: Ms. Anu Narula, Advocate.

versus

THE STATE

.....Respondent

Through: Mr. Tarang Srivastva, APP for the
State with Inspector Ravi Kumar,
P.S.: Baba Haridas Nagar and
Inspector Vipin Kumar, SHO, P.S.:
Karawal Nagar.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

04.09.2024

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By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No. 2/2018 dated 03.01.2018 registered under sections 394/397/34 of the Indian Penal Code, 1860 at P.S.: Baba Haridas Nagar, Delhi. Consequent upon completion of investigation, the offences were modified to sections 302/201/202/203/120B/34 of the IPC *vide* chargesheet dated 21.03.2018.

2. Notice on this petition was issued on 19.02.2024. Status report dated 01.04.2024 has been filed.
3. Nominal Roll dated 26.03.2024 has also been received from the Jail Superintendent in compliance with earlier orders.
4. Counsel for the petitioner has also placed on record the testimonies of certain prosecution witnesses, which are stated to be relevant for purposes of the present bail plea.



5. Briefly, the petitioner is accused of having murdered her husband in conspiracy with 03 other accused persons viz., Divya (her daughter), Gaurav Gulia (her nephew) and one Piyush (who is a friend of the petitioner's nephew). The allegation is, that in order to protect themselves from the consequences of the act, the accused persons created an entire crime-scene, in an effort to show that on the intervening night of 03/04.01.2018, at about 02:30 am, the petitioner's house was broken-into and burgled by 03 armed persons, aged around 20 to 25 years, who attacked the deceased Diwan Singh (petitioner's husband) in the process of committing burglary and escaped after robbing jewellery, a phone, a laptop and some ATM cards.
6. After the incident, the petitioner's husband was taken to the R.T.R Hospital, where he was admitted, and an MLC No.41/18 was drawn-up; whereafter he passed away on 08.01.2018.
7. The complainant in the FIR is the petitioner's daughter Divya, who is now a co-accused in the matter.
8. Upon completion of investigation, chargesheet dated 21.03.2018 was filed, which narrates that it was in fact the petitioner, who in conspiracy with the other accused persons, caused the death of her husband since she had suffered at the hands of the deceased as a battered wife.
9. The investigation hinges on an analysis of certain CDRs, which show that on the night of the incident co-accused Divya had placed a call to co-accused Piyush, which is being treated as an incriminating circumstance.



10. It is further the case of the prosecution, that *inter-alia* the weapon of offence, a wheel-spanner (*pana*) was recovered at the instance of co-accused Gaurav Gulia; alongwith certain jewellery and other articles which were recovered at the instance of Gaurav Gulia as well as co-accused Piyush.
11. Ms. Anu Narula, learned counsel appearing for the petitioner submits, that other things apart, admittedly no recovery has been made from the petitioner and except for a far-fetched motive that has been attributed to the petitioner, upon completion of the investigation, nothing incriminating that has come on the record against the petitioner.
12. Ms. Narula submits, that even if the petitioner had a difficult relationship with her husband, it is far-fetched to allege that she would kill him for that reason. Counsel submits, that there is no other material on record to connect the petitioner with the offence.
13. Counsel submits, that as a matter of fact, while cross-examining the petitioner's son Pratyaksh, who had been called as PW-1, the learned APP has himself put to him a suggestion that the witness had seen the hands of his mother and sister 'tied with a rope', which shows that it is the prosecution's own case that the petitioner and her daughter's hands were tied; and therefore they could not possibly have committed the offence.
14. Counsel submits, that the petitioner is a woman who is now about 50 years of age, who has been in judicial custody since 07.01.2018, except for the period when she was released on emergency parole during the then prevailing pandemic. Counsel submits, that the



petitioner has suffered more than 04 years of actual custody as of date; that her jail conduct has been 'satisfactory' and there is no allegation that she has misused her liberty or that she did not surrender on time when she was enlarged on emergency parole during the pandemic. It is also pointed-out that the petitioner has no other criminal involvement.

15. Ms. Narula further submits, that of the 52 prosecution witnesses cited in the charge-sheet, only 19 witnesses have been examined so far, despite lapse of about 06 years; and it is therefore unlikely that the trial would conclude anytime soon.
16. On the other hand, opposing the grant of regular bail, Mr. Tarang Srivastava, learned APP appearing for the State submits, that not only is the offence extremely grave since the petitioner is accused of having killed her own husband in conspiracy with others including her daughter; it is also the prosecution case that the accused persons had created an elaborate and entirely false crime scene, in order to mislead the investigating agency into believing that her husband had died in the course of a burglary. Learned APP submits, that the petitioner is given to deceptive action and she is also a flight risk. Learned APP further submits, that even though no recovery has been made from the petitioner or at her instance, she is still liable for the actions of the other co-accused persons by reason of section 34 IPC. It is submitted that in fact it is only the petitioner, who would have had motive to kill her husband, in view of their tumultuous marital relationship.



17. Upon a conspectus of the facts and circumstances of the case, what weighs with the court at this stage are the following aspects :
 - 17.1. That the petitioner is a lady, about 50 years of age, and has suffered actual custody of more than 04 years as of date;
 - 17.2. Admittedly, no recovery has been effected from the petitioner in relation to the offence; and as per the record, the alleged weapon of offence and the jewellery/articles supposed to have been burgled, have been recovered from other co-accused persons;
 - 17.3. Furthermore, only 19 out of 52 prosecution witnesses have so far been examined and the trial will inevitably take a long time to be completed.
18. As per the nominal roll, the petitioner's jail conduct has been 'satisfactory'; she has no other criminal involvements; and there is no allegation that she has misused her liberty when she was enlarged on emergency parole during the pandemic.
19. In the circumstances, this court is persuaded to admit the petitioner - **Smt. Sukhwanti w/o Diwan Singh** – to *regular bail* pending trial, subject to the following conditions :
 - 19.1. The petitioner shall furnish a personal bond in the sum of Rs. 20,000/- (Rupees Twenty Thousand Only) with 01 surety in the like amount from a family member, to the satisfaction of the learned trial court;
 - 19.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at



- any time and shall ensure that the number is kept active and switched-on at all times;
- 19.3. If the petitioner has a passport, she shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 19.4. The petitioner shall not offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 19.5. In case of any change in her residential address/contact details, the petitioner shall promptly inform the Investigating Officer in writing.
20. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of bail
21. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
22. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
23. The petition stands disposed-of in the above terms.
24. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 4, 2024/ak