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

+ **BAIL APPLN. 813/2023**

CHANDAN KAUR

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Adv. with Ms.
M. Begum, Mr. Shailendra Singh,
Ms. Avneet Kaur, Mr. Ishaan Jain and
Mr. Harsh Choudhary, Advs.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State with Insp. Balram, PS.
Sagarpur.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

05.03.2024

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1. The present petition has been filed under Section 439 CrPC seeking the regular bail in connection with FIR No.321/2019 under Section 302 IPC registered at Police Station Sagarpur.
2. The case of the prosecution is that the complainant Alia Ali stated in her statement that she saw Joginder Singh attacking her husband with a scissors due to which her husband fell down. Joginder and Sumit along with two other persons were also beating her husband and then they dragged her husband inside the house. The co-accused Chandan Kaur (petitioner herein) was shouting "*ise jaan se marr do*". Eventually the deceased namely Ahmed Raza @Shahrukh, who had suffered injuries died. This led to the registration of an aforesaid FIR.
3. Learned Senior Counsel for the petitioner submits that the role attributed to the present petitioner is that she had made an exhortation and was found washing away the blood with water and the other co-accused



Sangeeta was putting dust on the blood outside the house. No other overt act has been attributed to the petitioner nor it is the case of the prosecution that any injuries were given to the deceased by the petitioner.

4. He submits that co-accused Sangeeta is already on regular bail whereas the petitioner is on interim bail granted by this Court *vide* order dated 25.05.2023, considering her medical condition and age. The interim bail so granted to the petitioner was extended *vide* orders dated 29.05.2023 and 30.10.2023.

5. The learned Senior Counsel invites the attention of the Court to the order dated 10.01.2024 whereby the interim bail granted to the petitioner was yet again extended by observing as under:

“4. The status report alongwith certificate dated 28.12.2023 from the treating doctor has been handed over in Court and the same is taken on record. A perusal of the certificate shows that the petitioner, who is a female aged about 86 years and is a case of COPD with Type I respiratory failure with multiple co-morbidities, requires 24 hours oxygen support and Bipap support.”

6. He submits that the prosecution has cited as many as 27 witnesses out of which only one witness is an eye witness. Till today the only witness who has been examined is the eye witness and the other witnesses are yet to be examined, therefore, the conclusion of trial is nowhere in sight.

7. He further submits that the petitioner is a woman aged about 86 years, who is sick and ailing as noted by this Court in order dated 10.01.2024. In this backdrop, the learned Senior Counsel urges the Court to enlarge the petitioner on bail extending the benefit of first proviso to Section 437 CrPC to her.

8. He submits that though there are other cases under the NDPS Act



registered against the present petitioner but in all such cases, the petitioner has already been enlarged on bail and such cases are old cases. He further submits that registration of other cases against the accused cannot be a ground to deny bail to the petitioner.

9. *Per contra*, the learned APP has argued on the lines of the Status Report. He invites the attention of the Status Report, to contend that there are as many as 24 cases registered against the present petitioner and she has already been convicted in 06 cases registered against the petitioner. He specifically points out towards the FIR No. 43/2022 registered under Section 20 of NDPS Act, to contend that the petitioner was involved in a case even at the age of 85 years.

10. In rejoinder, the learned Senior Counsel invites the attention of the Court to the order dated 22.02.2022 (Annexure P-10), to contend that in connection with FIR No. 43/2022 under Section 20 of NDPS Act, the alleged recovery of contraband was made from the house and it is the son of the petitioner who is co-accused in that case. According to the learned Senior Counsel, the quantity of contraband recovered was intermediate quantity and in that case also, the learned Special Judge of NDPS Act, considering the age of the petitioner, as well as, quantity recovered from the accused, had granted bail to the petitioner after 05 days of her arrest.

11. As noted by this Court, the petitioner is a woman aged about 86 years and the case of COPD with Type I respiratory failure with multiple co-morbidities requiring 24 hours oxygen support and Bipap support, which factum has been verified by the I.O and the certificate to that effect was also submitted on the 10.01.2024 alongwith the status report.

12. It is not in dispute that the no injury to the deceased has been



attributed to the petitioner. The only role ascribed to her is that she exhorted to kill the deceased when other co-accused were giving beating to the deceased. Another allegation against her is she tried to destroy the evidence as she was found washing away the blood with water.

13. The co-accused Sangeeta against whom similar allegation of destruction of evidence, have been made has already been enlarged on bail.

14. The other cases stated to be registered against the petitioner are under the NDPS Act and the same are of the year 2016 and prior thereto, except aforesaid FIR No. 43/2022. In the FIR No. 43/2022 also the recovery of contraband is from the house and the petitioner has already been granted bail considering her age and ill health.

15. Considering the ailments of the petitioner, as well as, regard being had to the fact that the petitioner is a woman aged about 86 years, this Court is of the view that she is entitled to the benefit of first proviso of Section 437 CrPC and in the facts of the case there is no justification to deny the benefit of the same to the petitioner. The Hon'ble Supreme Court in ***Satender Antil Vs. CBI, 2022 (10) SCC 51***, has held that the benefit of first proviso of Section 437 CrPC can be extended even while considering the bail application under Section 439 CrPC. The relevant part of the judgment reads as under:

“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)

16. That apart, the prosecution has cited 27 witnesses and only 01 witness has been examined till date, therefore, inevitably the trial is a going to be a protracted one and given the age and the medical condition of the petitioner, she cannot be kept in custody for an indefinite period to await the outcome of the trial.

17. Keeping in view the aforesaid circumstances in entirety, this Court is of the opinion that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 50,000/- 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 not leave the Delhi without prior permission of the Court.
- b) Petitioner shall appear before the Court as and when the matter is taken up for hearing.



c) Petitioner shall provide her permanent residential address and mobile number to the IO concerned. The mobile shall be kept in working condition at all times and the petitioner shall not change the mobile number without prior intimation to the Investigating Officer concerned.

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

18. The petition stands disposed of.

CRL.M.A. 14629/2023

19. In view of the regular bail granted to the petitioner in the main bail application, this application is rendered infructuous and is disposed of as such.

20. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.

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

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

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

VIKAS MAHAJAN, J

MARCH 5, 2024/dss