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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 831/2024**
SHIVANI (IN JC) Petitioner

Through: Mr. Joginder Tuli, Ms. Joshini Tuli
and Ms. Shatakshi Sharma, Advs.

versus

STATE NCT OF DELHI Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State with Mr. Lalit Luthra, Adv. with
Insp. Rajnish Kumar and Insp. Rajesh
Kumar PS Sarai Rohilla

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

% **ORDER**
02.05.2024

1. The present bail application has been filed seeking regular bail in connection with FIR No. 277/2018 registered under Section 364A/120B/302/201/34 registered at PS Sarai Rohilla.
2. The case of the prosecution is that one Ramesh Chander made a complaint alleging that his son Prem Kumar aged about 24 years is working as LIC agent. On 19.07.2018 his son went to meet Ajay Singh and his friend Sarvesh for LIC Policy. At around 11.30 P.M. the mobile phone of his son got switched off.
3. However, during investigation on 21.07.2018, accused Ajay Singh was arrested and he disclosed that he along with his friend namely Sarvesh, his wife Shivani and his brother-in-law 'A' (CCL) killed him by strangulation for



ransom and put his body in an iron box and then dumped in the canal of Sirol Village, Distt. Etawah, U.P. The dead body of the deceased Prem Kumar was recovered from the canal at the instance of accused Ajay Singh.

4. The learned counsel for the petitioner submits that the incriminating material against the present petitioner is – (i) a disclosure statement of co-accused Ajay Singh, which is inadmissible evidence and (ii) the statement of witness Narender Singh recorded under section 161 CrPC. He was the driver of the car in which the box carrying the dead body was taken for disposal to Etawah. He stated about the presence of the petitioner in the said car.

5. He submits that the disclosure statement of co-accused Ajay Singh is inadmissible in evidence. In so far as the statement of Narender Singh is concerned, the submission is that the said witness did not state that the petitioner was aware that the box being carried in the car contains the dead body. Further, the recovery of the body was not at the instance of the present petitioner.

6. It is further the contention of the learned counsel that the petitioner is a lady and her husband/co-accused Ajay Singh has already expired. Further, the petitioner has two minor daughters aged about 14 years and 15 years. The petitioner being woman is entitled to the benefit of the proviso to Section 437(1) CrPC.

7. He contends that the petitioner is in custody for approximately 05 years. He, therefore, urges the Court that the petitioner may be released on bail.

8. *Per contra*, the learned APP has argued on the lines of the status report. He submits that the alleged offence was committed at residence of the present



petitioner and the motorcycle of the deceased was also recovered from a place near her house.

9. In rejoinder, the learned counsel for the petitioner tried to clarify that the house where the alleged incident of murder has taken place, was the residence of petitioner's husband and the recovery of motor cycle of the deceased is from a place away from the house of the petitioner.

10. I have heard the learned counsel for petitioner as well as learned APP for the State.

11. Insofar as the disclosure statement of co-accused Ajay Singh is concerned, suffice it to say that the same is not *per se* admissible against the present petitioner¹. The aspect whether the petitioner could be attributed knowledge as regard the dead body kept in the car in which the petitioner had travelled along with the co-accused will be considered by the learned Trial Court at the stage of trial.

12. Considering the fact that the petitioner is a woman, the provisions of Section 437 CrPC also needs to be adverted to. The relevant part of the said provision reads as under:

*“437. When bail may be taken in case of non-bailable offence.—
[(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of session, he may be released on bail, but—
(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted*

¹ 2011 SCC OnLine Del 5062



of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of 1 [a cognizable offence punishable with imprisonment for three years or more but not less than seven years:]

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm.”

13. Generally speaking, if for an offence punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Session, the Magistrate has no jurisdiction to grant bail unless the matter is covered by the proviso attached to Section 437 of the Code. The first proviso to Section 437(1) CrPC, however, carves out an exception that an accused may be released on bail, if such an accused is below the age of 16 years or is a woman or is sick or infirm.

14. There are, however, no such limitations circumscribing the jurisdiction of the High Court or the Court of Session under Section 439 CrPC. On the contrary, the benefit of the first proviso to Section 437(1) CrPC can be extended while exercising the powers under Section 439 CrPC. This being 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. It was so held by the Hon'ble Supreme Court in **Satender Kumar Antil vs. CBI: (2022) 10 SCC 51**. 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)

15. It is not in dispute that the petitioner is already in custody for the last 05 years and she is a woman. Her husband namely, Ajay Singh, who was co-accused, has expired and she has two minor daughters aged about 14 years and 15 years. In these circumstances, this Court is of the view that the benefit of the first proviso to Section 437(1) CrPC can be extended to the petitioner.

16. It is not the case of the prosecution that the petitioner has a criminal record, nor the petitioner appears to be a flight risk. Nevertheless, to ensure the availability of the petitioner during the trial, appropriate conditions could be imposed.

17. Keeping in perspective above circumstances, 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 his 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.

18. The petition stands disposed of.

19. It is made clear that nothing stated above is to be construed as an



expression of opinion on the merits of the case.

20. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
21. Order *dasti* under signatures of the Court Master.
22. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MAY 2, 2024
N.S. ASWAL