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

+ **BAIL APPLN. 1049/2024**

PAWAN

.....Petitioner

Through: Mr. Kundan Chandravanshi, Mr.
Siddharth Chaudhary, Mr. Ravi
Kumar & Mr. Avdesh Kumar, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for the
State with Gaurav Dua, Gaurav Gupta,
Jayant Chawala, Manaswy Jha,
Mussaiyab Nehdi Kazmi, Paripoorn,
Tushar Dutta, Advocates with SI
Deepak, PS Burari.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

22.07.2024

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1. This application has been filed seeking regular bail in FIR No.1039/2023 under Sections 306/498 IPC PS Burari. The petitioner has been in custody since 03rd August, 2023.

2. The background facts are that an information was received at about 2:37 a.m. on the intervening night of 2nd & 3rd August that a lady had jumped from the roof. Upon reaching it came to know that the victim was injured and was taken to Burari Government Hospital by the husband Pawan (the accused and the petitioner herein). She was declared brought dead. The crime scene was inspected. *Post-mortem* was conducted and statement of the deceased's mother Meena (the complainant) was taken. The *post-mortem*



report indicates certain *ante-mortem* injuries including nail marks. The cause of death is *cranio cerebral* damage due to surface impact.

3. The complainant/mother had stated that the petitioner/husband used to quarrel with her daughter and had called her at around 2:10 a.m. informing about the quarrel.

4. The testimonies of the complainant/mother as PW-2 have now been recorded as also that of the brother of the deceased as PW-3. Counsel for the petitioner points out to the testimony of PW-2 who states that she got a call at 1:30 a.m. from her daughter who said that the husband was holding both her hands and stifling her and she disconnected the phone and then later at 2:30 a.m. she got a call from the petitioner/husband that the daughter had jumped from the third floor of the house.

5. Importantly, counsel for the petitioner points out to the cross-examination of PW-2 where she stated in fair amount of detail that the deceased was a graduate while the petitioner has studied only upto 6th or 7th Class and had solemnized their marriage on 08th January, 2022 against the complainant's will. PW-2 had tried to convince the deceased to break their union and get separated. Both the petitioner and her daughter had come to her with request to accept their union. She confirmed that she was inimical to the said marriage. She was confronted with the statement recorded under Section 161 Cr.P.C. where she had not pointed these aspects out. She stated in her cross-examination that even after the marriage she tried her best that the marriage may not sustain since it was harming the reputation of the family. She made general allegations about having reports of the quarrels. She confirmed that she did not have any call recording, video recording or photograph to substantiate that petitioner was quarrelling with the deceased.



She stated that at the time, on 03rd August, 2023, prior to committing “suicide”, Rahul (cousin of the deceased) was also present. However, Rahul was never examined.

6. PW-3 whose testimony is essentially repetition of the complainant had told him about the telephone call from the deceased, and nothing further. Petitioner’s counsel says his evidence is pure hearsay.

7. In these facts and circumstances, the contention of the petitioner/accused that he cannot be implicated on these facts and circumstances, cannot be put aside. Besides testimony of the complainant has already been recorded as well as of the family members.

8. In these circumstances, considering that he has been in custody since the last one year and there is no previous involvement, in the opinion of this Court, the petitioner is entitled to bail.

9. The Hon’ble Supreme Court in **Satender Kumar Antil v. CBI**, (2022) 10 SCC 51 observed as follows:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”

(emphasis added)

10. The Hon’ble Supreme Court also noted the observations made by Krishna Iyer, J., in **GudikantiNarasimhulu v. Public Prosecutor**, (1978) 1 SCC 240 as under:

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure



established by law. The last four words of Article 21 are the life of that human right.”

(emphasis added)

11.

12. The Hon’ble Supreme Court further made note of their observations in **Sanjay Chandra v. CBI**, (2012) 1 SCC 40 as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

13. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the



following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

14. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

15. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.



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

ANISH DAYAL, J

JULY 22, 2024/MK