



2024:DHC:5662



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

%

Reserved on: 16th July, 2024
Pronounced on: 30th July, 2024

+

BAIL APPLN. 1471/2024

KOMAL

.....Petitioner

Through: Mr. Sameer Chandra, Mr. Shubham
Parashar & Mr. Aryan Tomar, Advs.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for the State
with Mr. Vishal Vats, Mr. Nitin, Ms. Sapna,
Ms. Monika Tyagi & Ms. Priyanka Tyagi,
Advs with SI Naveen , PS Bindapur

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition has been filed seeking regular bail, in FIR 439 /2019, registered at PS Bindapur, under Sections 302/201/34 of Indian Penal Code (“**IPC**”).
2. Petitioner has been incarcerated since 01st June, 2019. Interim bail was granted for 90 days by Trial Court and extended from time to time as per the HPC guidelines. She was released on 03rd June, 2021 and surrendered on 07th April, 2023. There were no previous involvements.
3. The case of the prosecution is that a PCR call was received on 24th April, 2019, informing that there was a suspicion that petitioner and another person had

Signature Not Verified

Digitally Signed
By: MANISH KUMAR
Signing Date: 01.08.2024
14:15:39

BAIL APPLN. 1471/2024

1 of 12



2024:DHC:5662



killed a four-year-old at House No. 55, Om Vihar Extn. Uttam Nagar, Delhi.

4. On inquiring, it was revealed that petitioner was residing on the second floor of the said house along with live-in partner Ravikar, and her four-year-old son, Saksham.

5. On 23rd April 2019, neighbours heard weeping voice of petitioner and when they went to the house, the couple informed them that two to three days ago, the child had accidentally fallen from the stairs, and today he had died. In the night of 23rd April 2019, Ravikar along with some neighbours took the dead body to Wazirabad cremation ground and buried the child, since cremation had been refused at Nigam Bodh Ghat.

6. Neighbours became apprehensive that the child had been murdered by the petitioner. After getting permission from SDM Dwarka, the dead body was exhumed from the Wazirabad cremation ground on 2nd May 2019. The head and the left limb of the dead body were found missing. The body was preserved at the mortuary.

7. On 7th May 2019, a *post-mortem* was conducted. On 31st May 2019, upon receiving information from complainant Raj Bahadur (a neighbour), that petitioner and Ravikar were present at their house, the IO reached the house and carried out further inquiry.

8. Petitioner disclosed that she was residing with Ravikar and was not married to him. The child was born out of wedlock from her first husband, Bikash Chaudhary. As per prosecution, Ravikar admitted that he struck the head of



2024:DHC:5662



Saksham on wall and strangled the child.

9. Statement of Raj Bahadur, the complainant, was also taken who stated that when he came to know that the child had died, on reaching the house, he was told by Ravikar that child had fallen from stairs, and had been given medicines, but ultimately died.

10. Another neighbour, Mahesh, who resided on the first floor, also came to know about this, and at 11.30 PM Ravikar called them to come to the cremation ground. Ravikar, along with Raj Bahadur, Mahesh and neighbours Rishabh and Anil went in two TCRs and buried the child. A case was registered. The forensic team examined the spot.

11. A statement was recorded by Bikash Chaudhary who confirmed that due to the petitioner's relationship with Ravikar, petitioner had left him and was living with Ravikar, along with her child.

12. Charge-sheet was filed. Charges were framed against the petitioner and Ravikar. 9 witnesses out of 31 witnesses have been examined. The trial is still underway.

13. In support of the bail petition, counsel for the petitioner factually stresses the point that there was no evidence that ought to implicate petitioner for the death of her own child. Prosecution is merely relying upon the hearsay evidence of the neighbours, who were neither eye-witnesses and were merely stating so on suspicion. The only other factor was the purported disclosure by Ravikar before the police, which is not admissible in law. There was nothing in the *post-mortem* report



2024:DHC:5662



to link the cause of death to any act of the petitioner.

14. Moreover, since the body was exhumed after nine days, it could well be possible that the head and the limb were missing due to possibility of occult practices or devouring by animals, such incidents being reported and not uncommon in cremation grounds.

15. Moreover, none of the neighbours whose statements were taken and had gone with the dead body for cremation, stated anything suspicious about the head or limb of the child not being present. The body of the child had been carried by the neighbours in a TCR so they had a chance to be in close proximity to the dead body.

16. No complaint was made by any of the neighbours before the burial of the dead body. It was stated that the husband of the petitioner namely Bikash Chaudhary in his cross-examination admitted that he was a habitual drinker. It was contended that this whole case was propped up at his behest in order to take revenge from the petitioner.

17. Counsel for petitioner highlighted testimony of PW-2 Raj Bahadur, who mentioned that petitioner did not explain how the deceased child died and he only stated that Ravikar, admitted in the presence of the police at the station that he struck the child's head on the wall. The counsel argued that this statement alone cannot implicate petitioner in her child's death, as PW-2 was merely suspicious, and even otherwise Ravikar's purported confessional statement had no value in law

18. Testimony of PW-4 Mahesh, the other neighbour was also adverted to, who confirmed that when he asked Ravikar, what happened to the child, he said three

Signature Not Verified

Digitally Signed
By: MANISH KUMAR
Signing Date: 01.08.2024
14:15:39

BAIL APPLN. 1471/2024

4 of 12



2024:DHC:5662



days prior he had fallen off the stairs, had been taken to the hospital, but had not survived. Mahesh, in his testimony stated that he could not confirm if the child was buried at Wazirabad. In cross-examination, he did state that he was sitting along with Ravikar and one other person, with the body of the child in the auto and he was there with four other persons when the child was being cremated. He could not confirm whether the cloth covering the child was removed before the child was being cremated.

19. As per the testimonies recorded so far, the case of the prosecution seems to rest on a purported confession by Ravikar, the live-in partner of petitioner that he had struck the head of the child against the wall. Needless to say, this statement cannot often be proof of guilt, as per Section 25 of the Indian Evidence Act.

20. The *post-mortem* examination only took place after exhumation of the body, which was after 9 days. The observations in the *post-mortem* report are that the body was decomposed with maggots. The head was separated from C4-C5 vertebral level and missing from the body and the left upper limb was separated from the left shoulder joint and missing from the body.

21. Aside from this, the *post-mortem* examination was on 07th May, 2019, and time of death was stated to be about 2 weeks. The subsequent opinion given by the forensic experts after considering the *post-mortem* report and FSL chemical analysis report of the viscera was “*no definitive cause of death can be given in this case as the head and left upper limb were missing and any other injury was inconspicuous due to advanced stage of decomposition*”.

22. *Prima facie*, at this stage, there is nothing that can be gleaned from the *post-*



2024:DHC:5662



mortem report to link the petitioner with the murder of the child.

23. Testimony of PW-1 rotates around various incidents of marital discord that ultimately led to a decree of divorce. Although he denied that he was a habitual drinker in the cross-examination, he did say he consumes liquor. Further, he did state that the parents of accused Ravikar, were relatives of his wife and therefore, he came in contact with Ravikar, as well. The information about the death of his son was given by PW-1's uncle, and he arrived in Delhi on the next day.

24. According to the testimony of Raj Bahadur (PW-2), the neighbour and the complainant, six individuals went in two autos for the burial of the child, with Raj Bahadur not present in the auto carrying the child. Raj Bahadur further states that his daughter-in-law called at 6:30 PM, informing him that the accused was weeping and claiming their son was unwell, and by 8:30 PM, their son had expired. They all went together for the burial. In these circumstances, assuming that the accused/petitioner was responsible for the child's death, it is unlikely they would have informed the neighbours and collectively taken the body for burial. However, these aspects would naturally be considered during the trial.

25. As per the testimony of PW-4, Mahesh, the body of the child was in the auto in which he was sitting with two other persons. Considering that the dead body of the child was in close proximity to many people, there is some substance in the petitioner's contention that no one complained about the child's head or limbs being dismembered or missing. This does *prima facie* create a reasonable doubt as to whether the head and limb were dismembered or missing, at the time when body was taken for burial.



2024:DHC:5662



26. At this stage, petitioner's contention that there is no material evidence to establish the prosecution's case beyond a reasonable doubt would have to be considered, particularly since petitioner has been in custody since May 2019 (about 4 years), and only 9 witnesses have been examined, out of 31 arrayed witnesses.

27. The trial is, therefore, expected to take time to conclude. Petitioner cannot be kept in custody indefinitely as an under trial, without proof of guilt. Also, the petitioner has been out on interim bail for a period of about 2 years from 2021 to 2023, as per HPC guidelines during COVID-19 pandemic and did not misuse the liberty. Petitioner, is a lady who is 28 years old, has no prior involvement.

28. There is also no apprehension of tampering with the witnesses or apprehension of threat, since all the witnesses i.e. neighbours have already been examined. The co-accused Ravikar continues to be in custody.

29. The Supreme Court in ***Prahlad Singh Bhati v NCT, Delhi and Another***, 2001 SCC Online SC 575, states as follows:

8. The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar

Signature Not Verified

Digitally Signed
By: MANISH KUMAR
Signing Date: 01.08.2024
14:15:39

BAIL APPLN. 1471/2024

7 of 12



2024:DHC:5662



other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

(emphasis added)

30. In ***Prabhakar Tewari v. State of UP & Anr***, 2020 SCC Online SC 75, the Supreme Court underscored a significant principle in the context of bail applications. The Court elucidated that the gravity and seriousness of the alleged offenses, alongside the pendency of criminal cases, cannot solely constitute a basis for the denial of bail. This ruling emphasizes that the mere existence of serious charges and pending cases should not be prejudicially weighed against the accused in deciding bail applications. Supreme Court's stance reinforces the importance of considering the individual merits of each case and upholding the principles of justice and fairness in the adjudication of bail matters. Relevant para(s) of the said judgment are extracted under:

6. In the case of Mahipal Vs. Rajesh Kumar @ Polia & Anr. (Criminal Appeal No.1843 of 2019) decided on 5th December, 2019, a coordinate Bench of this Court has discussed the scope of jurisdiction of the appellate Court in setting aside an order of granting bail. The two key factors for interfering with such an order are non-application of mind on the part of the Court granting bail or the opinion of the Court in granting bail is not borne out from a prima facie view

Signature Not Verified

Digitally Signed
By: MANISH KUMAR
Signing Date: 01.08.2024
14:15:39

BAIL APPLN. 1471/2024

8 of 12



of the evidence on record. In the case of Maulana Mohammed Amir Rashadi vs. State of Uttar Pradesh and Another [(2012) 2 SCC 382], a two Judge Bench of this Court declined to interfere with an order of the High Court granting bail to an accused having considered the factual features of that case.

7. On considering the submissions of the learned counsel for the parties. Having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in the case of Mahipal (supra) for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima-facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail...

(emphasis added)

31. In any event, the object of jail is to secure the appearance of the accused during the trial and the object is neither punitive nor preventive, the deprivation of liberty cannot be considered as a punishment, particularly when the trial is expected to take considerable time and duly delayed. In ***Javed Gulam Nabi Shaikh v. State of Maharashtra and Another***, 2024 SCC Online SC 1693, Court held that:

18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint



has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

(emphasis added)

32. Notably, a Coordinate Bench of this Court, in **Sumer Singh v State**, 2007 SCC Online Del 1189, stated aptly, on the Court's scope of assessment at stage of bail:

20. No doubt, at this stage, I am not required to threadbare examine the testimony of the witnesses, but that would not mean that his court would be totally prohibited from having a bird's eye view of the testimony of the witnesses.

21. Certainly, it may be arguable that the court, at this stage, cannot threadbare analyse the evidence i.e. start identifying consistent or inconsistent evidence and this exercise has to await final trial. But, where prosecution case appears to be weakening, justifying grant of bail, limited exercise of prima facie evaluating the evidence can be carried out by this Court.

(emphasis added)



2024:DHC:5662



33. 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 or any member of the complainant family or tamper with the evidence of the case.

34. Needless to state, but any observation touching the merits of the case is purely

Signature Not Verified

Digitally Signed
By: MANISH KUMAR
Signing Date: 01.08.2024
14:15:39

BAIL APPLN. 1471/2024

11 of 12



2024:DHC:5662



for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

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

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

37. Judgment be uploaded on the website of this Court.

ANISH DAYAL, J

JULY 30, 2024/RK

Signature Not Verified

Digitally Signed
By: MANISH KUMAR
Signing Date: 01.08.2024
14:15:39

BAIL APPLN. 1471/2024

12 of 12