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

+ **BAIL APPLN. 3989/2023**

RAKHI @POOJA KAPOOR

..... Petitioner

Through: Mr. Vivek Sood, Sr. Adv. with Mr.
R.D. Rana, Ms. Rasneet Kaur and Mr.
Ravnak Gupta, Advs.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Hemant Mehla, APP for State

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

30.01.2024

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1. The present petition has been filed seeking regular bail in connection with FIR No. 1375/2014 under Sections 302/201 IPC registered at Police Station Rajouri Garden.
2. The allegation against the petitioner is that she had beaten her maid servant which led to her death.
3. The learned senior counsel for the petitioner submits that the petitioner has remained in custody for almost 05 ½ years. He submits that the prosecution has cited as many as 46 prosecution witnesses and till date only 27 witnesses have been examined, therefore, the conclusion of trial is nowhere in sight.
4. He further submits that the petitioner has been enlarged on interim bail on various grounds almost 20 times but she has never misused the



liberty so granted to her.

5. He further contends that the petitioner is having strained relationship with her husband who is residing in London and she is looking after her child as a single mother. According to the learned senior counsel the child is also having psychological problem and is under treatment of a psychiatrist. In support of his contention he has referred to an order of this Court dated 20.11.2023 passed in BAIL APPLN. 2717/2023. Para 7 of the said order reads as under:-

“7. The factum that the petitioner’s son is undergoing treatment has been verified by the IO. Further, the doctor has advised the petitioner to remain present with the child at all times considering his mental health. It is also not in dispute that the father of the child is an NRI and residing in London, therefore, the petitioner is the only parent who could provide care and attention to the child.”

6. He further submits that the petitioner is staying with her mother, who is about 71 years and is suffering from cancer.

7. Further, the reliance has been placed on the decision of the Hon’ble Supreme Court in ***Indrani Pratim Mukerjea Vs. Central Bureau of Investigation and Another, 2022 SCC OnLine SC 695***, to contend that the petitioner therein was enlarged on bail considering the long incarceration of 06 ½ years of the petitioner, without going into the merits of the case.

8. Likewise, reliance has also been placed on the decision of the Hon’ble Supreme Court in ***Praveen Rathore Vs. State of Rajasthan and Another, 2023 SCC OnLine SC 1268***, to contend that regard being had to the long incarceration of 04 ½ years and the fact that it had already taken too long to conclude the trial, the petitioner therein was enlarged on bail.



9. He, therefore, urges the Court to enlarge the petitioner on regular bail.
10. *Per contra*, the learned APP for State has argued on the lines of the status report, a copy of which has been handed over in Court and the same is taken on record.
11. A perusal of the nominal roll dated 11.12.2023 shows that the petitioner has undergone 05 years 02 months and 24 days of custody as on 05.09.2023.
12. It is also not in dispute that the prosecution has cited as many as 46 witnesses in the chargesheet and till date only 27 witnesses have been examined. It thus, appears that the conclusion of trial is likely to take long time.
13. Further, the fact that the petitioner is a single mother who is looking after her teenaged child, who is having psychological problem, and is under the treatment of a psychiatrist, is also not in dispute.
14. Besides that the petitioner being a woman is also entitled to the benefit of the first proviso to sub-section (1) of Section 437 Cr.P.C. In view of the law laid down by the Hon'ble Supreme Court in "*Satender Antil Vs. CBI, 2022 (10) SCC 51*" that the benefit of proviso to Sub-Section (1) of Section 437 can also be extended while considering the bail application under Section 439 CrPC:-

"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. At this stage, without going into the merits of the case and considering the aforesaid facts and circumstances, this Court is of the view that the petitioner is entitled for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing a Personal Bond in the sum of Rs.50,000/- and one Surety Bond each of the like amount to the satisfaction of the learned 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 her permanent address, as well as, her mobile number to the IO concerned. The mobile number 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 any of the witnesses.

16. The petition stands disposed of.

17. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.

18. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

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

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

VIKAS MAHAJAN, J

JANUARY 30, 2024

N.S. ASWAL