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

\+ BAIL APPLN. 4306/2023 & CRL.M.A. 35177/2023

DOULI CHAUDHARY ..... Petitioner

Through: Dr L. S. Chaudhary, Dr Ajay Chaudhary, Ms Kavita Krishna, Mr Bharat Chaudhary, Mr Vikram Singh, Ms Vinita and Ms Monika, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI) ..... Respondent

Through: Mr Raghvinder Varma, APP for the State with SI Shri Narayan, PS Hauz Qazi.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

O R D E R

% 28.05.2024

1. The present petition has been filed under Section 439 CrPC read with Section 482 CrPC seeking regular bail in connection with FIR No.131/2018 under Sections 365/34 IPC registered at PS Hauz Qazi. Subsequently, the chargesheet was filed under Sections 364/365/302/201/120B/34 IPC.

2. The case of the prosecution is that initially a missing report of one Sushil Kumar was lodged by Rishipal Singh. Allegation in the FIR was that Sushil Kumar was having an affair wtih the petitioner/accused. Subsequently, Sushil Kumar came to know that the petitioner was also having affair with another person, namely, Mohit Mavi, due to which he

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became angry and he was pressuring her to leave Mohit Mavi. It is alleged in the FIR due to these reasons, it was suspected that Sushil Kumar had been kidnapped and kept hostage at some unknown place.

3. During investigation, the petitioner was interrogated and she disclosed that she was having an affair with Sushil Kumar since 6-7 years and he was pressuring her to marry him and she did not want to get married to Sushil Kumar. She fixed up a meeting with Sushil Kumar at Mathura and also called one of her family member, i.e., co-accused Manish Chaudhary @ Manish Kumar who was resident of Mathura and accordingly they stayed in a hotel in the afternoon.

4. It is further the case of prosecution that the petitioner also disclosed that in the evening she met Sushil Kumar and, thereafter, they roamed in Mathura and then booked a room in a hotel in Mathura and stayed there. The petitioner ordered for biryani and she also bought two bottles of soft drinks from the hotel and when Sushil Kumar went to the toilet, she mixed 50 sleeping pills in the soft drink and thereafter, when Sushil Kumar came back to the room and consumed soft drink, he became unconscious. Thereafter she called the co-accused Manish Chaudhary to the hotel and along with Manager of the hotel they put unconscious Sushil on a scooty. While, the petitioner was driving the scooty, the co-accused Manish Chaudhary was holding the unconscious Sushil Kumar in middle, sitting as pillion rider. Then they threw Sushil Kumar in Yamuna River from Old Yamuna Bridge. Based on the statement of the petitioner, she was arrested.

5. Learned counsel for the petitioner at the outset submits that the co-accused Manish Chaudhary has already been enlarged on bail by this Court vide order dated 23.05.2019 passed in BAIL APPLN.1039/2019. He

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submits that the present case is based on circumstantial evidence and the dead body of the missing person, namely, Sushil Kumar has not been recovered till date.

6. He submits that even no efforts were made to recover the bottles of cold drink to find out residue of the sleeping pills in the said soft drink for the purpose of establishing that sleeping pills were added to the cold drink.

7. He invites the attention of the Court to the seizure memo *vide* which the entry register of hotel Varun Residency was seized, to contend that the said register indicates that the same was prepared on 02.09.2018, however, intriguingly, the said register contains entries upto 09.09.2018 which shows that the register has been tampered with. Referring to the entry no.84, it is further contended by the learned counsel for the petitioner that the same shows that the original entry has been scored off which was made in the name of one Heena. Learned counsel for the petitioner submits that the petitioner has already undergone custody of 3½ years and her custody is not required any further for the purpose of investigation.

8. Apart from making submissions on the merits of the case, learned counsel submits that the petitioner is a woman and has a child aged about 1 year, therefore, in the peculiar facts of the case the benefit of first proviso to Section 437(1) of CrPC be extended to her.

9. *Per contra*, learned APP for the State has argued on the lines of the status report.

10. It is not in dispute that the co-accused who is alleged to be involved in the conspiracy has already been enlarged on bail by this Court *vide* order dated 23.05.2019 passed in BAIL APPLN. 1039/2019.

11. It is also an admitted position that the dead body of Sushil Kumar has

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not been recovered till date.

12. A cursory glance at the entry register of hotel Varun Residency shows that there is some substance in the contention of the learned counsel for the petitioner that though the entry register of the hotel was seized on 02.09.2018 but the same contains entries upto 09.09.2018 indicates possibilities of tampering in the register.

13. That apart, this Court cannot be unmindful of the peculiar feature of the case that the petitioner is a lady and has a son aged about 1 year. In this view of the matter, this Court is of the opinion that the petitioner deserves to be extended the benefit of the first proviso to Section 437(1) CrPC.

14. Undisputedly, the petitioner does not have any criminal record nor it is the case of the prosecution that the petitioner is at flight risk. Besides that the petitioner is already on interim bail and she has not misused the liberty so granted to her at any stage.

15. Considering the aforesaid facts in entirety, the petitioner is admitted to regular bail. Accordingly, the petitioner is enlarged on regular bail subject to her 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 Trial 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 he shall not change the mobile number without prior intimation to the Investigating Officer concerned.

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c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with 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 and information.

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

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

VIKAS MAHAJAN, J

MAY 28, 2024
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