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

+ **BAIL APPLN. 4336/2024**

BIRMA DEVI (SR. CITIZEN)

.....Petitioner

Through: Mr. M. Hasibuddin and Ms.Simran,
Advocates

versus

THE STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr. Laksh Khanna, APP for State with
Insp.Rajpal

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

05.12.2024

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1. By way of the present application, the petitioner/applicant seeks anticipatory bail in FIR No.276/2024 registered under Sections 302/120-B/34 IPC at P.S. Bindapur, Delhi.

2. Learned counsel for the applicant submits that though the offences alleged against the accused persons are vague, however, the present applicant is not involved in the same. He submits that the applicant is a 70-year-old lady and her name is not stated in the initial statement witnesses recorded on 30.06.2024. He submits that though in the statement recorded on 30.06.2024, only one witness mentions about her presence at the spot, but no specific role has been ascribed to her. It is only three months later, on 22.09.2024, for the first time, that the witnesses have ascribed role of being present with a *danda* and stopping others from reaching the deceased.



3. Learned APP for the State has opposed the bail application. He contends that in the later statements, the witnesses have clearly stated that the applicant had exhorted others and was carrying a stick, however, she was stopped by *Mahinder@Bunty*, a witness who was present at the spot. He further submits that during the pendency of the present bail application, the applicant has been declared a proclaimed offender. Lastly, it is submitted that her presence is also established from the CCTV footage of the incident seized at the spot.

4. I have heard learned counsel for the applicant as well as learned APP for the State and have also gone through the material placed on record.

5. The FIR was registered on 27.06.2024 in the context of an incident where the injured was beaten and stabbed, resulting in his death. All the accused persons stand arrested. The applicant is a 70-year-old widow lady, who though statedly was present at the spot, however, in the initial statement of witnesses, no role has been ascribed to her. Even in the later statements, the witnesses have only stated about her holding a stick and giving exhortation.

6. In the decision of Asha Dubey v. The State of Madhya Pradesh in **Criminal Appeal No.4564 of 2024**, it has been held as under:-

“8. Coming to the consideration of anticipatory bail, in the event of the declaration under Section 82 of the Cr.P.C., it is not as if in all cases that there will be a total embargo on considering the application for the grant of anticipatory bail.”

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“25. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the



cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.”

9. Keeping in view the fact that the role of the applicant of holding a stick and alleged exhortation was stated for first time after 3 months of registration of FIR and further bearing in mind her age, prima facie the applicant has satisfied the parameters outlined in the abovenoted decision. The applicant had already approached this court before being declared an absconder. In light of peculiar facts and in interest of justice, it is directed that in the event of arrest, the applicant be released on bail subject to her furnishing a personal bond in the sum of ₹25,000/- with one surety of like amount to the satisfaction of the Arresting Officer/Investigating Officer/SHO of the concerned Police Station and also subject to the following further conditions: -



- (i) At the time of furnishing bail bond, the applicant shall provide the mobile number, which she undertakes to keep operational at all times during the pendency of the trial.
 - (ii) The applicant shall join the investigation as and when asked.
 - (iii) The applicant shall inform the concerned Investigating Officer about her current residential address.
 - (iv) In case of change of residential addresses/contact details, the applicant shall promptly inform the same to the concerned Investigating Officer/SHO.
 - (v) The applicant shall not directly or indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
 - (vi) The applicant shall regularly appear before the trial Court.
10. The application is disposed of in the above terms.
11. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

DECEMBER 5, 2024

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