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

+ **BAIL APPLN. 3500/2024**

TARNNUM @ SONALI

.....Petitioner

Through: Mr. Dipanshu Chugh, Advocate
(through VC)

versus

STATE (NCT) OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for the State
Mr. Jitender Dagar, SI Tarun Khatri, SI
Rajesh Kumar Koli, PS Nihar Vihar

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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14.02.2025

1. The present application has been filed under Section 483 read with Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking grant of regular bail in FIR No. 1136/2020 dated 04.12.2020 registered at Police Station (P.S.) Nihal Vihar for offence under Section 365 of the Indian Penal Code, 1860 (IPC).

2. The charge-sheet in the subject FIR has been filed under Sections 302/301/34 of IPC before the Trial Court on 13.09.2022 and charges against the Applicant as well as the co-accused, Mufeed Ansari have been framed under Sections 302/301/34 of IPC.

Brief Facts

3. As per the case of the prosecution, as set out in the Status Reports, is that on 17.11.2020 complainant, Kalandar Ansari filed a missing complaint for his son, Rohil Ansari at P.S. Paschim Vihar West, Delhi. However, later on the



said complaint was transferred to P.S. Nihal Vihar, Delhi and consequently, the subject FIR was registered against the Applicant herein and her husband, Mufeed Ansari.

3.1. It is stated that Rohil Ansari was living on rent at Peeragarhi, Delhi and working as a helper at Delhi Metro.

3.2. It is stated that the complainant disclosed that his nephew, Mufeed Ansari along with his wife, Tarnnum (i.e., the Applicant herein) live at D-3/36, Gali No. 19, Kunwar Singh Nagar Nangloi, Delhi ('Applicant's house'). It is stated that Rohil was a friend of Tarnnum, and he often visited her.

3.3. It is stated that on 16.11.2020, the complainant received a call from his son-in-law, Mohd. Manzar, who informed that Rohil had left his residence at 12:30 PM on 15.11.2020 but has not returned since then and further enquired if Rohil had visited the complainant.

3.4. It is stated that since there was no clue regarding Rohil's whereabouts, the complainant along with his son-in-law Mohd. Manzar, visited the Applicant's house to inquire about Rohil. However, accused Mufeed and Applicant/Tarnnum informed the complainant that they had no knowledge about the whereabouts of Rohil.

3.5. It is stated that in the aforesaid circumstances, the complainant lodged a complaint on 17.11.2020, which led to registration of the subject FIR under Sections 365 IPC.

3.6. It is stated that during the investigation, CCTV cameras installed in and around the Applicant's house were checked and it was found that on 15.11.2020 at about 1:44 PM Rohil was seen going towards the Applicant's house. It is stated that CCTV footage showed that accused Mufeed was seen going towards Applicant's house at about 2:15 PM in his Honda City Car. It is



stated that thereafter, at about 2:36 PM, the Car of Mufeed was seen going away from the Applicant's house.

3.7. It is stated that during investigation it was found that both, accused Mufeed and the Applicant/Tarnnum had fled away from Delhi and they were nowhere to be found. It is stated that as per the CDR analysis, the accused persons i.e., Mufeed and the Applicant (collectively referred to as 'accused persons') were found at their native place at Taki Nagar in West Medinipur (West Bengal) and they were arrested from Taki Nagar after interrogation on 08.12.2020.

3.8. It is stated that during interrogation on 12.12.2024 the accused persons confessed that on 15.11.2020, they murdered Rohil Ansari by strangulation and thereafter threw Rohil's dead body at GT Karnal Road, Sonipat, Haryana. It is stated that at the instance of accused and Applicant herein, the dead body was recovered. It is stated that mobile phone of deceased, Rohil Ansari was recovered from the accused Mufeed Ansari. And pursuant to this Section 302/34 IPC were added to the FIR in the facts of the present case.

3.9. It is stated that the co-accused, Mufeed in his disclosure statement disclosed that he has been living in Delhi since last 8-9 years and got married to the Applicant/Tarnnum in 2014. He stated that on 15.11.2020 he left for work in the morning and upon returning at around 2 PM, he found that the door to his room closed from inside, while deceased Rohil was in the house during his absence. It was disclosed that Mufeed strangled Rohil using dupatta of the Applicant/Tarnnum, while Applicant/Tarnnum held deceased's hands. It is stated that the body of the deceased was loaded in the Honda city Car by the co-accused and the Applicant/Tarnnum and thereafter the body was thrown at GT Karnal Road, Sonipat.



3.10. It is stated that the trial is at the initial stage, as out of 31 witnesses total of 3 witnesses have been examined. It is stated that the next date of 15.04.2025.

3.11. It is stated that after analysis of the CDRs of the accused persons it was found that Applicant's mobile was switched off from 7:47 PM on 15.11.2020 to 02:18 AM on 16.11.2020. It is stated that the location of the co-accused, Mufeed's mobile was found at Tehsil-district, Sonipat on 15.11.2020 at 10:37 PM, where the dead-body of the deceased was found in the trench.

3.12. During course of arguments, learned APP stated that at the time of recording of the statement of the complainant initially in November, 2020, P.S. Paschim Vihar West checked the CCTV footage near the Applicant's house, as per which at about 2:15 PM, Honda City Car of the co-accused Mufeed was seen going away from the Applicant's home. He stated that the CCTV footage was recovered from the neighbour i.e., Naresh at the relevant time.

3.13. It is stated that however, after the body of the deceased was discovered, when I.O. tried to obtain the said CCTV footage near the Applicant's house the same was not available due to lapse of time.

Arguments on behalf of the Applicant

4. Learned counsel for the Applicant states that the Applicant was arrested on 08.12.2020 and as on 18.10.2024 as per the Nominal Roll¹, the Applicant has already undergone a period of 3 Years and 10 Months in the judicial custody. He states that no recovery has been affected from the Applicant, which connects the Applicant with the murder of the deceased.

4.1. He states that the public witness i.e., the complainant has already been examined and discharged. He states that only formal and police witnesses



remain to be examined in the present case and therefore, there is no possibility of the Applicant/accused tampering with the evidence or witnesses.

4.2. He states that the conduct of the Applicant has been good and nothing adverse has been recorded against the Applicant. He states that no case is pending against the Applicant and she has clean antecedents.

4.3. He states that no role has been assigned to the present Applicant and the Applicant has not done anything in the offence committed.

4.4. He states that the Applicant has already undergone the sentence prescribed for offence under Section 201 IPC and therefore, she should get the benefit of Section 436A Cr.P.C. He states that further even if the version of the prosecution is believed then too at best a case under Section 304 Part II Exception 4 IPC is made out against the Applicant.

4.5. He states that the Applicant and the co-accused, Mufeed were arrested in West Bengal on 08.12.2020. He states that disclosure statement recorded on 08.12.2020 do not record that Applicant held the hands of the deceased when the co-accused strangled the deceased. He states that this embellishment has been included when the Applicant was brought to Delhi and the I.O. once again recorded statement on 12.12.2020. He states that this is a material improvement included in the disclosure statement to implicate the Applicant. He states that as per the prosecution the Applicant was in an extra marital relationship with the deceased and the allegation that she participated in the murder is improbable.

4.6. He states that there is no CCTV footage for 15.11.2020 which shows that the Applicant/Tarnnum accompanied the co-accused, Mufeed out of the house to dump the body of the deceased as alleged.

¹ Dated 19.10.2024



4.7. He states that the alleged joint discovery of the body at the instance of the Applicant and the co-accused can also not be attributed to her as she was merely present when the discovery was made at the instance of the co-accused Mufeed. He states that there is no CDR of the Applicant's mobile placing her at the scene of disposal of the body of the deceased at Sonipat.

Arguments on behalf of the State

5. In reply, the learned APP states that the allegations against the Applicant/accused are with respect to Section 302/34/201 IPC. He states that the Applicant along with the co-accused i.e., the Applicant's husband had committed the murder of the deceased, Rohil Ansari and thereafter, the deceased's body was thrown by them at GT Road, Sonipat.

5.1. He states that during interrogation in West Bengal, the Applicant disclosed that she along with her husband murdered Rohil Ansari by strangulating him and that thereafter they threw away the deceased's body on the Highway of the GT Karnal Road, Sonipat.

5.2. He states that as per the CDR analysis, Applicant's mobile was switched off from 7:47 PM on 15.11.2020 to 02:18 AM on 16.11.2020.

5.3. He states that as per the CDR analysis, the Applicant and deceased were in contact and calls were made at 12:15 PM, 12:28 PM and 13:39 PM on 15.11.2020.

5.4. He states that after the commission of the offence, the Applicant along with the co-accused, Mufeed ran away to West Bengal and they had to be arrested there and brought back to Delhi.

5.5. He states that as per the second disclosure statement of the Applicant and the co-accused, specific role has been ascribed to the Applicant in the commission of the murder of the deceased.



5.6. He states that the recovery of the dead body of the deceased was made at the instance of the Applicant and the co-accused, Mufeed from Sonipat, Haryana.

5.7. He states that circumstantial evidence including the last scene evidence, technical evidence i.e., the CCTV footage, CDR and other evidences clearly indicate the involvement of the Applicant in the commission of the alleged offences.

5.8. He states that significantly on 17.11.2020 when the complainant i.e., the father of the deceased went to the house of the Applicant/Tarnnum and co-accused, Mufeed to enquire about the whereabouts of Rohil, Applicant misled the complainant by denying that she had met the deceased on 15.11.2020. He states that if the Applicant was not guilty, she should have apprised the complainant about the murder of the deceased.

5.9. He confirms that from the data extracted from the mobile phone of the deceased, no incriminating videos or photos of the Applicant/Tarnnum have been found therein.

5.10. He states that the CDR analysis of the co-accused, Mufeed for 15.11.2020 shows the co-accused, Mufeed's location at Sonipat from where the body of the deceased was recovered. He states that for the relevant time mobile phone of the Applicant was probably switched off and therefore there are no CDR details. However, this does not rule out that the Applicant accompanied co-accused Mufeed, when Mufeed went to Sonipat, as the dead body was discovered at their joint instance. He states that these facts will be duly proved at trial.



Analysis and conclusion

6. This Court has heard learned counsel for the parties and perused the record.

7. Before advertng to the analysis of the facts of the present case, it would be apposite to refer to the factors which are to be taken into consideration for granting bail to an accused, similarly placed to the Applicant herein and in the peculiar facts of the present case.

8. The Supreme Court in the case of **Prasanta Kumar Sarkar v. Ashis Chatterjee**², **State of Uttar Pradesh v. Amarmani Tripathi**³, and **Deepak Yadav v. State of Uttar Pradesh**⁴ has set out the conditions to be considered by Court while granting bail, which are summarized as under: -

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behavior, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced;
- and
- (viii) danger, of justice being thwarted by the grant of bail.

² (2010) 14 SCC 496.

³ (2005) 8 SCC 21.

⁴ (2022) 8 SCC 559.



8.1. This Court in the case of **Ashok Sagar v. State**⁵ has further summarized the principle for granting bail in matter which involve serious/heinous offences. The relevant paragraph of the said judgment reads as under: -

“35. Authorities on bail, and the jurisprudence relating thereto, are in overabundance, and it is hardly necessary to multiply references thereto. The principles governing exercise of judicial discretion in such cases, appear, however, to be well-settled. The following principles may immediately be discerned, from the aforementioned authorities:

(i) Incarceration, during trial, is not punitive, but to secure the presence of the accused. The approach of the court, in examining applications for bail, which seek release of the accused during trial, has, therefore, necessarily to centre around the issue of whether continued incarceration of the accused is necessary and imperative, towards securing the end of obtaining his presence when required. Incarceration during trial, therefore, neither chastises nor cures.

(ii) While examining the issue, courts are **not to presume** that the accused would flee justice, were he to be released, and search for evidence indicating to the contrary. Logistically, every accused, who is released during trial, has the potentiality of fleeing. Were this potentiality to be allowed to influence the mind of the court, no accused would be entitled to bail.

(iii) While examining applications for bail, the court has to be duly sensitized to the mandate of Article 21 of the Constitution of India, which guarantees freedom to every citizen of India save and except by procedure prescribed by law. Curtailment of personal liberty during trial, has, therefore, to be limited to those cases **in which it is absolutely essential**, and in which, in the absence of such curtailment, the process of trial is likely to be hampered by the accused, whether by vanishing or by unduly influencing the trial process, by intimidating the witnesses, or otherwise. If no such apprehension can legitimately be expressed, there can be no reasonable ground to keep the accused incarcerated, as incarceration would then assume a punitive avatar.

(iv) **Given this legal position, the nature of the offence committed necessarily has a limited role to play, while**

⁵ 2018 SCC OnLine Del 9548.



examining the merits of an application for bail. This is for a simple reason that the application being examined by the court is not for suspension of sentence, but for release during trial. If the court were to allow itself to be unduly influenced by the nature of the charges against the accused, and the seriousness of the crime alleged to have been committed by him, it would result in obliterating the distinction between grant of bail and suspension of sentence. Inasmuch as the applicant, in a bail application, has yet to be found guilty of the offence with which he is charged, the significance of the nature of the offence stand substantially reduced, while examining the application for bail. Courts have to be alive to the legal position - underscored in the very first paragraph of Dataram Singh (supra) - that every accused is presumed to be innocent until proved guilty.

(v) Where, however, the material against the accused is so insubstantial that the court feels that his conviction, in the ultimate eventuate, appears remote, the court can legitimately arrive at a conclusion that, as the accused is highly unlikely to ultimately suffer conviction, his incarceration during trial, would be unjustified.

(vi) Having said that, the decisions cited hereinabove reveal that the Supreme Court has, in certain cases, treated the seriousness of the offence alleged against the accused seeking bail, to be a relevant consideration while examining the merit of his application. While it may be true that, in extremely gross cases, the advisability of allowing the accused to roam at large, during the course of his trial, may be questionable, the court has, nevertheless, to be alive to the fact that, at that stage, the charge against the accused is still in the realm of an accusation, and no more. It would be entirely impermissible for the court, at the stage of deciding the bail application of the accused, to subject him to a premature trial, far less to return any finding, even tentative, regarding the justifiability of the charge against him.

.....”

(Emphasis supplied)



8.2. In the case of **Suryavir v. State of Haryana**⁶ the Supreme Court observed that recovery is not a substantive piece of evidence and it is only to be used for corroboration. The relevant paragraph of the said judgment reads as under:

“18. That leaves us with subsidiary evidence regarding recovery, which in the absence of substantive evidence, by itself would not be sufficient. In the circumstances, in our considered view, the prosecution failed to establish its case beyond reasonable doubt. The appellant would, therefore, be entitled to acquittal. The instant appeal is thus allowed acquitting him of the charges levelled against him.”
(Emphasis supplied)

8.3. The Supreme Court in the case of **Union of India v. K.A. Najeer**⁷ opined that once it is evident to the Court that the trial is not to be going to concluded timely and the accused having undergone sufficient period of incarceration, the Courts would be obligated to enlarge the said accused on bail.

8.4. The Supreme Court in the case of **Praveen Rathore v. State of Rajasthan**⁸, while granting bail to an accused of murder, noted the importance of personal liberty and right to speedy trial and observed as under:-

“5. It is not in dispute that the Applicant, by now, has undergone more than four and a half years of sentence. The prosecution intends to examine 76 witnesses, out of whom 53 have already deposed. All the crucial witnesses have already been examined. The instant case was adjourned on few occasions to enable the prosecution to examine Chauthmal Kashyap and Manohar Rathore, who were stated to be the vital witnesses. Their deposition is also complete.

....

7. Taking into consideration the period already spent by the Applicant in custody coupled with the fact that conclusion of trial

⁶ (2022) 3 SCC 260.

⁷ (2021) 3 SCC 713.

⁸ 2023 SCC Online SC 1268.



will take some reasonable time however, without expressing any views on the merits of the case, we are inclined to release him on bail.”

(Emphasis supplied)

9. The incriminating circumstances pressed against the Applicant herein are: (i) Disclosure statements of the Applicant and the co-accused, (ii) CDR of the Applicant, deceased and the co-accused for 15.11.2020, (iii) CCTV footage for 15.11.2020; and mainly (iv) the alleged recovery of dead body of the deceased at the instance of both the Applicant and the co-accused.

10. In the first disclosure statements given by the Applicant and the co-accused on 08.12.2020 though there was mention of the Applicant being present at the place of commission of offence but there was no role ascribed to the Applicant. However, in the second disclosure statements of the Applicant and the co-accused recorded on 12.12.2020, there has been a material addition in the version so disclosed and a specific role has been ascribed to the Applicant herein, that while the co-accused, Mufeed was strangulating the deceased, the Applicant was holding the hands of the deceased. The probative value of the said disclosure statements will be considered and tested during trial after evaluating the corroborative evidence led by prosecution.

11. The counsel for the Applicant contended that in the CCTV footage for 15.11.2020 relied upon by the prosecution, the Applicant herein is not seen leaving the house and therefore, the allegation that she accompanied the co-accused, Mufeed to dispose of the body at Sonipat is not established. It is further contended that CDR of the Applicant does not place her at Sonipat on the intervening night of 15-16 November, 2020 as alleged by the prosecution. These contentions of the Applicant prima facie show that the presence of the Applicant at Sonipat on the intervening night of 15-16 November, 2020 is not



established by the prosecution through independent evidence of CCTV or CDR analysis. However, the effect of the pointing out memo and recovery of the dead body at the joint instance of the Applicant and the co-accused, Mufeed subsequently will be considered by the Trial Court.

12. At this stage, it cannot be denied that there is no direct evidence against the Applicant of her involvement in the commission of the offence of murder. The prosecution has mainly relied on the recovery of dead body at the joint instance of the Applicant and the co-accused, Mufeed which fact though material whether it is sufficient to prove her participation in murder or merely destruction of evidence will be evaluated by the Trial Court.

12.1. One of the peculiar facts, which is to be noted by this Court is that there are no eye-witnesses to the commission of the offence. This Court is conscious of the law that when the case is based solely on the circumstantial evidence, the chain of circumstances must be that complete that it leaves no reasonable ground for any other conclusion except for the hypothesis of the guilt of the accused person.

13. Admittedly, the case is at the stage of prosecution witness and out of 31 witnesses only three (3) have been examined, in the light of the said fact the trial is likely to take a considerable period of time. Perusal of the Nominal Roll dated 19.10.2024 would show that the Applicant has been in judicial custody for 03 Years 10 Months and 4 Days as on 18.10.2024 (4 Years and 2 Months approx. as on date). Further the Applicant herein has no criminal antecedents and the conduct of the Applicant in the jail is satisfactory as per the said Nominal Roll.

14. This Court is not expressing any view on the nuanced aspects and merits of the matter as the same is subject matter of an ongoing trial. However, having



considered the period of incarceration and the fact that the trial is likely to take some time, as also that the alleged chain of events pleaded by prosecution would have to be proved [by the prosecution] by leading reliable evidence to bring home the guilt of the Applicant and establish Applicant's culpability in the commission of murder, the Court is of the opinion that the Applicant is entitled to bail pending trial.

15. In the judgments noted above, the Supreme Court and the Division Bench of this Court have reiterated and emphasized that the object of the jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. However appropriate conditions ought to be put to assuage the apprehension of the accused tampering with the evidence or evading the trial.

16. In the light of the above, it would not be prudent to keep the Applicant behind the bars for an indefinite period and this Court finds it to be a fit case for grant of bail. Consequently, the Applicant is directed to be released on bail on furnishing personal bond in the sum of Rs. 1,00,000/- with one local surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- (i) Applicant will not leave the country without prior permission of the Court.
- (ii) Applicant shall provide the details of the address to the Trial Court and the I.O., at which the Applicant shall be residing. The Applicant shall intimate the Court by way of an affidavit and to the I.O. regarding any change in residential address. The counsel for the Applicant has stated that the Applicant will be residing at Piparpanti, Post-Ecamba, Jalalgarh, Purnea, Bihar-854327, P.S.



Jalalgarh upon being enlarged on bail. The I.O. is directed to verify the said address and file a report before the Trial Court within one (1) week.

(iii) Applicant shall appear before the Trial Court as and when the matter is taken up for hearing; and not seek any unnecessary adjournment.

(iv) Applicant shall join investigation as and when called by the I.O. concerned.

(v) Applicant shall provide all mobile numbers to the I.O. 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 I.O. concerned.

(vi) Applicant will report to the concerned S.H.O of the local police station of the area in which the Applicant shall reside on every 1st Thursday of every month, at 4:00 PM, and will not be kept waiting for more than an hour. The concerned I.O. will inform the jurisdictional SHO about the passing of this order.

(vii) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

17. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

18. 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.



19. Accordingly, this Bail Application is allowed and disposed of. Pending applications (if any) are disposed of as infructuous.

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

21. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 14, 2025/mt/sk/MG