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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3888/2024 &CRL.M.A. 32137/2024**

BABITA RAJ

.....Petitioner

Through: Mr.Sumit Kumar, Advocate.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

10.01.2025

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By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks regular bail in case FIR No. 35/2021 dated 10.03.2021 registered under sections 307 of the Indian Penal Code, 1860 ('IPC') and sections 25/27/54/59 of the Arms Act, 1959 at P.S.: Defence Colony, New Delhi. Consequent upon completion of investigation, offences under sections 302/120-B IPC have been added *vide* chargesheet dated 27.05.2021.

2. Notice on this petition was issued on 24.10.2024. Status Report dated 01.11.2024 has been filed by the State. Nominal Roll dated 02.12.2024 has also been received from the Jail Superintendent.
3. The allegation against the petitioner in the subject FIR is that she was involved in the murder of her husband at the hands of co-accused Rohan Kumar, who (latter) shot him while riding a motorcycle and



fled. The deceased Bhim Raj is stated to have died subsequently at the AIIMS Trauma Centre, New Delhi while under treatment.

4. The petitioner is facing trial in the matter along with two co-accused persons - Rohan Kumar and Amit Kumar.
5. The principal contentions raised on behalf of the petitioner in support of the bail plea are the following :
 - 5.1. That the petitioner, who is the wife of the deceased, was at home at the time of commission of the offence; and the CCTV footage stated to have been collected from the crime scene only shows that a motorcycle-borne assailant shot at the deceased, who was later traced through the registration number of the motorcycle;
 - 5.2. That the only connection sought to be established between the assailant co-accused/Rohan Kumar and the petitioner is that Rohan Kumar was a salesman for PhonePe and was acquainted with the petitioner since he had installed a PhonePe barcode at the beauty parlour that the petitioner runs. It is further pointed-out, that the allegation that Rohan Kumar was in an illicit relationship with the petitioner is based purely on the statement of the said Rohan Kumar;
 - 5.3. That certain CDRs which show telephonic contact between the petitioner and co-accused/Rohan Kumar between November 2020 and March 2021 as well as on the date of the offence have been cited as incriminating circumstances, alleging that on the date of the incident the two were in touch with each other; however no transcript of any conversation between the two is



available with the investigating agency, and therefore mere CDRs showing telephonic connectivity between the two cannot be treated as an incriminating circumstance;

- 5.4. That nothing incriminating has been recovered from, or at the instance of, the petitioner; and the alleged weapon of offence, a country-made pistol, has been recovered from the house of co-accused/Rohan Kumar at his instance, which has nothing to do with the petitioner;
- 5.5. That it has also been alleged that the weapon of offence was purchased by co-accused/Rohan Kumar from the third co-accused, viz. Amit Kumar, for Rs. 65,000/- of which Rs. 30,000/- was arranged by the petitioner, which allegation again is based on no concrete material to show any transfer of money from the petitioner to Rohan Kumar.
- 5.6. That though the mobile-phones of all the accused persons have been seized and are stated to have been sent for forensic examination, as of now no report has been received from the FSL in relation to the phones;
- 5.7. That investigation in the matter is complete and charge-sheet stands filed way back in May 2021. In the meantime, only 14 of the 27 prosecution witnesses have been examined, implying thereby that trial will take a long time to conclude.
- 5.8. That most importantly, two crucial prosecution witnesses, viz. PW-1/Chander Shekhar (who is claimed to be an eye-witness) and PW-6/Lakhan have both turned hostile in the course of their deposition before the learned trial court.



6. It is accordingly, prayed that the petitioner be enlarged on regular bail pending trial.
7. Opposing the grant of bail, Mr. Utkarsh, learned APP appearing for the State submits, that there was no connection or transaction or dealings between co-accused/Rohan Kumar and the deceased, *except* the connection through the petitioner, *viz.* that the petitioner was having an illicit relationship with Rohan Kumar. Learned APP accordingly submits, that the deceased was shot-at and killed at the behest and instance of the petitioner, who is therefore liable for the offence punishable under section 120-B IPC.
8. Learned APP also argues that about 1346 phone-calls were exchanged between the petitioner and co-accused/Rohan Kumar during the period November 2020 and March 2021, *i.e.* in a span of only about 05 months, with the date of the offence being 10.03.2021. Apart therefrom, learned APP submits, that there 371 SMSs were also exchanged between the parties, the transcript of which will be available alongwith the FSL report, which is awaited.
9. In the circumstances, it is argued that the petitioner does not deserve to be granted regular bail.
10. The court has also heard Ms. Payal, who is the daughter of the petitioner and the deceased; and has addressed the court as the next-of-kin of the deceased in terms of the mandate of the Supreme Court in ***Jagjeet Singh & Ors. vs. Ashish Mishra @ Monu & Anr.***¹ As recorded in order dated 09.01.2025, the daughter had said that she

¹ (2022) 9 SCC 321 at paras 22 & 23



would address the court herself in the present proceedings. As also stated by her on that date, the daughter submits that she does not oppose the grant of bail to the petitioner, who is her mother.

11. Upon an overall conspectus of the facts and circumstances of the case, the considerations that weigh with the court at this stage are the following:

11.1. Admittedly, no recovery has been made from, or at the instance of, the petitioner and the allegation that she is involved in the murder of her husband is premised principally on the disclosure statement of co-accused/Rohan Kumar, with whom she is alleged to have been in an illicit relationship;

11.2. Though the prosecution has alleged extensive telephonic contact between the petitioner and Rohan Kumar, both by way of phone-calls and messages, in support of which they are citing CDRs of the parties, the exact context and content of those conversations is not available on record as of now;

11.3. Most significantly, PW-1, who is claimed by the prosecution to be an eye-witness to the incident; as well as PW-6, who is another public witness, have both turned hostile in the course of their deposition before the learned trial court;

11.4. Lastly, as seen from Nominal Roll dated 02.12.2024, the petitioner has already suffered judicial custody of about 03 years and 09 months as an undertrial, while only 14 out of 27 prosecution witnesses have so far been examined. Ergo, the trial in the matter is bound to take a substantial period of time.



12. In view of the above, this court is persuaded to grant to the petitioner – ***Babita Raj w/o Bhim Raj*** – *regular bail* subject to the following conditions :

- 12.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 12.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 12.3. If the petitioner has a passport, she shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 12.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 12.5. In case of any change in her residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
- 12.6. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.



13. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
14. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
15. The petition stands disposed-of.
16. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 10, 2025

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