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

+ **BAIL APPLN. 3898/2024**

POOJA

.....Petitioner

Through: Mr. Pulkit Jain and Ms. Alisha,
Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State
with SI Sandeep Yadav, PS: Sadar
Bazar

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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13.02.2025

1. The present application has been filed under 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking regular bail in FIR No. 77/2022 for offences under sections 302/452/34 of the Indian Penal Code, 1860 ('IPC') registered at Police Station (P.S) Sadar Bazar, Delhi.
2. The case of the prosecution borne out from the status report is that on 28.03.2021, there was a quarrel between the complainant and the accused Lucky over exchange of money. It is stated that the quarrel escalated and the family of accused Lucky, which included his wife (i.e., the Applicant herein), children and an aunt all arrived at the spot to quarrel with the complainant. It is stated that the complainant's son Manish (deceased) also arrived at the scene and at this stage accused Lucky and his family



members manhandled Manish (deceased). It is stated that at that stage the matter was sorted out by the neighbours.

3. It is stated however, subsequently on the intervening night of 29-30.03.2021, at about 12.15 AM, Applicant/Pooja came to the complainant's house and started quarrelling. Thereafter accused Lucky (i.e., husband of the applicant), Dhruv (Son) and Vaishali, Shivani, Ishika (Daughters) as well as Geeta (Aunt) also came to the spot. It is stated that all of them entered into the complainant's house and started scuffle with Manish [deceased].

4. It is stated that all of the aforesaid six (6) persons dragged Manish (deceased) out of the house and started beating him by punching and kick blows. It is stated that the Applicant/Pooja told her son Dhruv/co-accused to get a knife from their house. It is stated that thereafter co-accused Dhruv, who got a knife and assaulted Manish (victim) with the said knife. It is stated that during the said altercation, Manish (victim) sustained a fatal injury on his thigh. It is stated that thereafter all six accused including the Applicant/Pooja fled from the spot.

5. It is stated that the complainant along with her elder son Bobby took her son Manish (since deceased) to Lady Hardinge Hospital, where he died while receiving treatment. It is stated that on this happening, present FIR was registered and investigation ensued.

6. It is stated that during investigation, then crime scene was investigated and statements of the complainant as well as another eye-witness Munni (since deceased) was recorded under section 161 of C.r.P.C, which supported the version of the complainant.



7. It is stated that the Applicant/Pooja and her family were not found at their home and two teams were constituted to find them and they were finally arrested. It is stated that disclosure statements of all the seven (7) were recorded. It is stated that at the instance of the accused Dhruv the knife, i.e., the weapon of offence used in the commission of the offence was recovered as well a blood-stained banyan.

8. It is stated that since accused Dhruv was a CCL and also the three (3) daughters of the Applicant are minors, they as well are CCLs; accordingly, a PIR in respect of CCLs has been submitted.

Arguments of the Applicant/accused

9. Learned counsel for the Applicant states that investigation has already been completed and chargesheet as well stands filed before the Trial Court. He states that the case is currently at the stage of prosecution evidence and evidence of three (3) witnesses have already been completed.

9.1. He states that the complainant has been examined as PW-1 and the brother of the deceased has been examined as PW-2; thus, material witnesses have been examined. He states that the other eye-witness Munni has passed away and therefore there is no other material public witness. He states that the remaining 26 witnesses are official witnesses.

9.2. He further states that applicant has been in custody since 30.03.2021 and since the trial is likely to take a considerable amount of time; therefore, no useful purpose would be served for keeping the Applicant in judicial custody.

9.3. He states that the nothing has been recovered at the instance of the Applicant and after filing of the chargesheet as well, the Investigating officer (I.O) has failed to show any relevant evidences against the



Applicant to support the allegation that she was involved in committing the offence of murder.

9.4. He states that the Applicant has no criminal antecedent against. He states that Applicant's extended family lives in Delhi and she has roots in the society; therefore, there are no chances of the Applicant fleeing if she is admitted to bail. He states that as regards to FIR No. 102/2017 registered at P.S. Sadar Bazar, the Applicant has been acquitted of all charges by the Trial Court vide judgment dated 19.01.2023 and no appeal has been filed.

9.5. He states that the that the Applicant undertakes to make herself available as and when directed by this Court or as required by the police officials/IO.

Arguments of State

10. In reply, Mr. Khanna, learned APP opposes the bail application of the Applicant. He states that the present case is a case involving commission of an offence of murder and the allegations levelled in the FIR against the Applicant are very serious and grave in nature.

10.1. He states that the Applicant and the complainant's family members reside in the same locality. He states that the Applicant's house is 2-3 streets away from the complainant's house.

10.2. He states previously as well the regular bail application of the Applicant filed before the ASJ-02, Central District, Tis Hazari Court, New Delhi (Trial Court) has already been dismissed vide order dated 12.09.2024

Findings

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



12. Before adverting to the facts of the present case it would be apposite to refer to the principles elucidated in judgment passed by the Division Bench of this Court in **Ashok Sagar v. State**¹ for granting bail in matter. The relevant extract 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 examining the merits of an application for bail.** This is for a simple reason that the

¹ 2018 SCC OnLine Del 9548.



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)

13. Further the Supreme Court in the case of **Praveen Rathore v. State of Rajasthan**², 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**

² 2023 SCC Online SC 1268.



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.

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

14. The Applicant has been in judicial custody for 03 years 07 months and 27 days as on 27.11.2024 as per the last Nominal Roll on record. Thus, as on date, the Applicant has been in judicial custody for approximately 03 years 11 months. Her conduct in the jail is reported to be satisfactory.

15. Upon query raised by this Court and in relation to the order dated 10.01.2025 passed by this Court, it has been clarified by the counsels that the antecedents of the Applicant are clean, in as much as, no other criminal case is pending against her and as regards to one previous involvement shown by the prosecution in FIR 102/2017 registered at Police Station of Sadar Bazar, it has been clarified that the Applicant stands acquitted vide judgment dated 19.01.2023 passed by learned Metropolitan Magistrate-06, Central District, Tis Hazari Courts, Delhi in Criminal Case No. 10364/2017. This position has been uncontroverted in the 2nd Status Report dated 13.02.2025 filed by the State.

16. The role of the Applicant as per the prosecution is that she picked up a quarrel with the complainant on the date of the incident; and thereafter the



Applicant along with her entire family including four (4) minor children dragged the deceased (Manish) out of the house and started beating him. The prosecution states that at that stage Applicant also exhorted her-son CCL Dhruv to get a knife from the house, which led to CCL Dhruv getting the knife and injuring Manish (deceased) on the thigh, which injury led to the death of Manish. The charges have been framed under Section 302/452/34 of IPC against the Applicant and the accused persons. The assailant as per the prosecution is CCL Dhruv. The Applicant has been charged for Section 302 by invoking Section 34 of the IPC; the fact whether the Applicant had common intention and whether she instigated CCL Dhruv would be assessed by the Trial Court after all evidence is placed before it. However, at this stage keeping in view the judgment of the Division Bench in **Ashok Sagar** (supra) this Court is not required to be unduly influenced by the nature of charges against the Applicant and is only require to asses whether the Applicant is entitled to bail pending the trial.

17. The complainant is the eye-witness and her testimony already stands recorded as PW-1. The other eye-witness Munni has since deceased. The brother of the deceased Deepak also stands examined as PW-2. Thus, material witness on behalf of the prosecution have already been examined. There can thus be no apprehension of influencing the witnesses.

18. The Applicant has been in custody for approximately 3 years 11 months. There are 26 more witnesses to be examined and therefore, trial is likely to take some time. It is not the case of the prosecution that the Applicant has in any manner caused delay in the trial. However, it is apparent that the trial is likely to take a considerable amount of time.



19. With regards to the apprehension of State that on being enlarged on bail, Applicant will return to the locality where the complainant resides with her family and this may expose the complainant and other witnesses to threat or undue influence, the same has been addressed by learned counsel for the Applicant to state that the Applicant will not return to her earlier residence at 10990, Gali Pipal Wali, Motia Khan, Sadar Bazar, Delhi. He states that Applicant will reside at House no A- 133, Phase 3, Sector 3, J.J. Colony, Dwarka, N.S.I.T Dwarka, South-West Delhi, Delhi – 110078 ('Dwarka'). He states that the house at Dwarka belongs to the mother-in-law of the Applicant's brother. He states that the Applicant undertakes to not come to the locality where the complainant resides.

20. In the light of the aforementioned facts, this Court finds it to be a fit case for grant of bail. The Applicant is, therefore, admitted to regular bail in FIR No. 77/2022 registered at P.S. Sadar Bazar, Delhi and is directed to be released on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the learned Trial Court and subject to the following conditions:

- (i) Applicant will not leave the country without prior permission of the Trial Court.
- (ii) Applicant after being enlarged bail shall reside at the said address i.e., House no A- 133, Phase 3, Sector 3, J.J. Colony, Dwarka, N.S.I.T Dwarka, South-West Delhi, Delhi – 110078 ('Dwarka').
- (iii) The Applicant shall intimate the Trial Court by way of an affidavit and to the IO, regarding any change in residential address.



- (iv) The Applicant shall not reside within 5 Km radius of the residence of the complainant.
- (v) Applicant shall appear before the Trial Court as and when the matter is taken up for hearing.
- (vi) Applicant shall provide all mobile numbers to the IO 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 IO concerned.
- (vii) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant or any member of the complainant's as well as deceased family.
- (viii) The Applicant shall not threaten the witnesses or tamper with the evidence of the case.
- (ix) The Applicant shall physically report at the concerned police station having jurisdiction over the Dwarka house once in a month, i.e., on the 1st Monday of every month at 04:00 PM and the concerned officer is directed to release her by 05:00 PM after recording her presence and completion of all formalities. The IO is directed to inform the SHO of the concerned P.S. in Dwarka.

21. 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.

22. 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.



23. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

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

25. 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 the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 13, 2025/hp/ms

[Click here to check corrigendum, if any](#)