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

+ **BAIL APPLN. 4662/2024**

ANITA

.....Petitioner

Through: Dr. L.S. Chaudhary, Dr. Ajay Chaudhary, Ms. Kavita Krishnia, Mr. Bharat Chaudhary, Mr. Vikram and Mr. Anirudh Sharma, Advs.

versus

STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr. Aman Usman, APP for State with Insp. Subhash Chand PS Darya Ganj, New Delhi

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

27.02.2025

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1. The present petition has been filed under Section 483 BNSS, 2023 read with Section 528 BNSS, 2023 seeking regular bail in connection with FIR No.227/2018 under Sections 302/34 IPC registered at PS Darya Ganj, Delhi.
2. The FIR came to be registered on the basis of DD No. 18A when a male dead body lying under Geeta Colony flyover was recovered.
3. Dr. L.S. Chaudhary, the learned counsel appearing on behalf of the petitioner submits that in the present FIR the petitioner and one Vijay have been arraigned as accused only on the basis of circumstantial evidence.
4. He submits that the entire case as projected by the prosecution is highly doubtful. The recovery of dead body was made on 23.08.2018, however, the



FIR came to be registered only after 15 days on 07.09.2018. There is no explanation, whatsoever, for the delay in registration of FIR. Further, the dead body was found near Geeta Colony flyover whereas the FIR was registered at PS Daryaganj.

5. He submits that as per the case of prosecution ASI Bachchu Singh was on patrolling duty. He received an information through PW-Hira Lal on the basis of which he reached the spot and found a dead body of a male in the decomposed state and informed his own police station i.e. PS Darya Ganj instead of informing the jurisdictional Police Station of Geeta Colony.

6. Dr. Chaudhary further submits that the prosecution has pressed into service the following incriminating circumstances:

- (i) recovery of Aadhaar Card of co-accused Vijay from the spot and weapon of offence in the form of a stone;
- (ii) the CDR showing that the petitioner was in touch with the deceased through a mobile phone;
- (iii) the statements of PW-Yamuna which were recorded under Section 161 CrPC, as well as, under Section 164 CrPC; and
- (iv) the CFSL report pertaining to the recovered offence weapon i.e. stone.

7. He submits that the recoveries allegedly made on the basis of disclosure statement of the petitioner are planted and highly unreliable. Elaborating on his submission, he submits that the crime team had visited the spot but no documents like Aadhaar Card or the offence weapon i.e. stone were found or recovered by the crime team. The said recovery was made by the police only on 15.09.2018 after the present petitioner and co-accused had been arrested. He submits that the recovery of Aadhaar card of co-accused



Vijay is at the instance of the said co-accused, whereas only a stone was allegedly recovered at the instance of the petitioner. He submits that the recovery of stone is from the open space frequented by public, therefore, the recovery itself is doubtful.

8. He submits that as per CFSL report, no blood could be detected on the alleged weapon of offence i.e. Stone. Further, the post mortem report could not conclude the definite time since death.

9. Dr. Chaudhary further contends that the CDRs have been collected by the police but none of the mobile phones with regard to which the CDRs have been collected pertains to the present petitioner. According to him both the telephones were registered in the name of the deceased. Even if it presumed for the sake of argument that the petitioner was using the phone registered in the name of the deceased, as alleged by the prosecution, even then the CDR location does not establish the presence of the petitioner at the spot on the date of incident.

10. He further contends that the prosecution has projected PW-Yamuna as star witness whose statement under Section 161 CrPC as well as 164 CrPC, were also recorded on 30.10.2018 i.e. after about two months' period from the date of recovery of dead body.

11. Inviting attention of the Court to the statement of the PW-Yamuna recorded under Section 164 CrPC, he submits that the said witness has made general statements with regard to the fights between the present petitioner and deceased Rajesh. He further contends that the said witness has also feigned ignorance with regard to the residential address of the premises where the present petitioner was residing with the deceased though she also stated that she was residing in the neighbourhood of the petitioner.



12. It is also the contention of Mr. Chaudhary that the statement of PW-Yamuna demolishes the story of the prosecution insofar as the arrest of the petitioner alongwith co-accused Vijay from the spot is concerned, in as much as PW-Yamuna in her statement recorded under Section 164 CrPC has stated that petitioner-Anita was arrested from residence and she (PW-Yamuna) was also taken to the police station alongwith Anita.

13. He further submits that if as per the statement of PW-Yamuna, she was also taken to the police station alongwith petitioner-Anita after her arrest, then the statement of PW Yamuna could have been recorded on the same day itself when petitioner-Anita was arrested and there was no need to wait for one and a half months for recording the statement of PW-Yamuna after petitioner's arrest. He submits that this aspect of PW-Yamuna's statement also goes a long way to show that PW-Yamuna is a planted witness.

14. He further contends that the present petitioner had been released twice on HPC Guidelines and the liberty so granted was never misused by her. He further submits that the petitioner is a woman and the benefit of first proviso to Section 437 CrPC may be extended to her.

15. *Per contra*, the learned APP has argued on the lines of status report.

16. He contends that the conduct of the present petitioner itself shows the petitioner's involvement in the offence. Elaborating on his submission, he submits that it is not in dispute that the petitioner was staying alongwith the deceased and after the deceased had gone missing, no missing report was ever made by the petitioner.

17. He further contends that the petitioner was the last person who called the deceased on his mobile number and at that point of time the locations of both the phones were different, therefore, there is not substances in the



contention of the learned counsel for the petitioner that the deceased was using both the mobiles registered in his name.

18. He submits that insofar as contention that ASI Bachchu Singh did not inform the PCR, rather visited the place of spot before informing his own police station, the submission is that such a course adopted by ASI Bachchu Singh was normal, in as much as he had first verified the factum of crime before making a call to his police station.

19. He further submits that insofar as recovery is concerned the same was though from an open place but it is a jungle which is not frequented by public at large.

20. Insofar as delay in registration of FIR is concerned, the contention is that the delay has happened because of the time taken in conducting the post mortem.

21. In rejoinder, Dr. Chaudhary submits that there is no admission to the effect that the present petitioner was staying with Rajesh. He further submits that there is no substance in the submission of the learned APP that the petitioner was using one of the mobile phones registered in the name of the deceased since the said phone/sim card was not recovered from petitioner's possession.

22. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

23. The present case is based purely on circumstantial evidence. Therefore, the prosecution is under an obligation to prove each and every link in chain of incriminating circumstances beyond all manner of doubt and that circumstances so relied upon by prosecution should point unequivocally towards guilt of accused and should be inconsistent with innocence of the



accused. In other words, only in the event of complete/unbroken chain of circumstances being proved by cogent and clinching evidence which does not admit of any other interference, otherwise that of the guilt of the accused, the conviction can be recorded.

24. The incriminating circumstances which have been relied upon by the prosecution have been enumerated in para 6 above.

25. The offence weapon i.e., stone which was allegedly recovered at the instance of the present petitioner was undisputedly recovered from an open space. The contention of the learned counsel for the petitioner is that such open space is frequented by public at large, whereas, on the other hand, the learned APP has contended that such open space is a jungle which is not frequented by general public. Be that as it may, the question whether the open space from where the 'stone' was recovered is frequented by public at large is a matter of trial. However, it is not in dispute that as per the FSL Report, no blood could be detected on the alleged weapon i.e., Stone.

26. It is also not in controversy that the two mobile phones with regard to which CDRs have been collected were registered in the name of the deceased. Though, the learned APP has contended that one phone was being used by the present petitioner, however, it is not the case of the prosecution that any phone/SIM card which was registered in the name of the deceased was recovered from the present petitioner.

27. The submission of Dr. Chaudhary that the statement of star witness PW-Yamuna recorded on 30.10.2018 under Section 164 CrPC contradicts the prosecution version and also demolishes the prosecution story as regard the arrest of petitioner/Anita from the spot, does not appear to be wholly without substance, however, the ultimate call with regard to the probative value of the



testimony of PW-Yamuna, once it is recorded, as well as, her reliability as witness, will be taken up by the learned Trial Court during the trial. At this stage some of the gaps which have been pointed out by Dr. Chaudhary in the statement recorded under Section 164 CrPC of the star witness PW-Yamuna, will enure to the benefit of the petitioner, regard being had to the fact it is a case which hinges only on the circumstantial evidence.

28. There is, of course, delay in the registration of the FIR. Likewise, there is delay in the recording of statements of PW-Yamuna both under Sections 161 and 164 CrPC, which was recorded on 30.10.2018 despite PW-Yamuna having been taken to the police station along with the petitioner post petitioner's arrest on 15.09.2018. The benefit of this delay will also enure to the benefit of the petitioner at this stage of considering her bail plea, more particularly, when she has already been incarcerated for a period of 04 years, 06 months and 10 days as on 08.01.2025.

29. That apart, it is also not in controversy that the petitioner had been released twice on HPC guidelines and liberty so granted was never misused by her.

30. It is also not the case of the prosecution in the Status Report that the petitioner has criminal record. Further, the petitioner does not seem to be a flight risk, since she is a permanent resident of Delhi. In any case, the presence of the petitioner during trial could be ensured by imposing appropriate conditions.

31. Having regard to the aforesaid circumstances, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted on 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/CJM/Duty JM, further subject to the following conditions:

- a) Petitioner shall appear before the 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 she shall not change the mobile number without prior intimation to the Investigating Officer concerned.
 - c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
32. The petition stands disposed of.
33. 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.
34. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
35. Order *dasti* under signatures of the Court Master.
36. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 27, 2025

N.S. ASWAL/dss