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

+ **BAIL APPLN. 4701/2024**

AJAYPAL

.....Petitioner

Through: **Mr. Mukesh Kalia, Mr. S. Sharma
and Mr. Rahul R. Gupta, Advocates**

versus

THE STATE (N.C.T OF DELHI)

.....Respondent

Through: **Mr. Aman Usman, APP for State with
Insp. Manu Dev, PS Subzi Mandi**

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

13.02.2025

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1. The present petition has been filed seeking regular bail in connection with FIR No. 678/2015 under Section 302/34 IPC registered at Police Station Subzi Mandi.
2. The case of the prosecution is that on the complaint made by the father of deceased, namely, Sammar Vishnu, the FIR came to be registered under Section 306 IPC, which was subsequently converted into an offence punishable under Section 302 IPC.
3. The allegations in the FIR are that the deceased was married to the petitioner since 2005 and the petitioner was having frequent quarrels with her which were often resolved by the complainant. On 23.12.2015, the complainant's son received a call from Jyoti who assured him that she was fine. However, on 24.12.2015 at around 3.00 a.m. complainant was informed by his son Tapan that Jyoti has passed away. The complainant



stated that the deceased's in-laws either gave her something to consume or pressurised her to take an extreme step due to the dispute regarding property.

4. Mr. Mukesh Kalia, learned counsel appearing for the petitioner submits that as per the prosecution case itself, the incident is of 24.12.2015, however, the FIR came to be registered on the complaint of the deceased's father made on 31.12.2015. Thus, there is delay of seven days in registration of FIR which has not been explained. He submits that initially on the basis of the complaint, the offence was registered under Section 306 IPC which was later converted into an offence under Section 302 IPC.

5. He submits that there are two children out of the petitioner's wedlock with the deceased - one daughter aged about 9 years and a son aged about 5 years.

6. He invites attention of the Court to the chargesheet to contend that the children were taken away by the complainant on the date of incident itself and the statement of the minor daughter was recorded by the police after 46 days on 10.02.2016. He submits that in such a situation, tutoring of the minor daughter, who has been cited as a witness, cannot be ruled out.

7. He invites attention of the Court to the nominal roll to contend that the petitioner has already undergone incarceration of about 6 years 3 months and 21 days as on 16.01.2025. He submits that the petitioner was granted interim bail on 07 occasions including interim bail granted on the recommendations of HPC but the petitioner never misused the liberty so accorded by this Court and always surrendered on time. He further submits that the prosecution has cited as many as 21 witnesses and till date only 13 witnesses have been examined and this position is operating for the past many years.



8. He submits that the petitioner has clean antecedents and he is not on a flight risk nor there is any possibility of him influencing the witnesses in the event he is enlarged on bail. He, therefore, urges that the petitioner be released on bail.

9. *Per contra*, learned APP appearing on behalf of the State has argued on the lines of the status report. He submits that the daughter of the petitioner has been examined and she has supported the case of the prosecution. He further submits that the one of the material witnesses, namely, Deepak who is brother of the deceased is under cross-examination. He, therefore, urges that the bail petition of the petitioner be dismissed.

10. I have heard the learned counsel for the petitioner as well as learned APP appearing for the State and have perused the material on record.

11. Though, the impact of delay in the registration of FIR and recording the statement of minor witness (daughter of deceased) will be considered by the learned trial court during trial and any comment at this stage by this Court will adversely prejudice the petitioner as well as the prosecution, however, the fact that the incident is of 24.12.2015, the FIR came to be registered after seven days of delay on 31.12.2015 and further the statement of the minor witness was recorded after 46 days on 10.02.2016, is a material aspect of the matter as it is trite law that delay in setting the law in motion by lodging the complaint or registration of FIR is normally viewed by courts with suspicion because there is possibility of concoction of the case against the accused.¹

12. In so far as the testimony of minor daughter of the petitioner is concerned, the probative value of the same as well as the reliability of the

¹ State of Madhya Pradesh vs. Chhaakki Lal and Anr., (2019) 12 SCC 326.



said witness will also be considered by the trial court, however, the submission of the learned counsel that there is possibility that his minor daughter has been tutored, cannot be negated altogether in the facts and circumstances of the present case.

13. Further, it is not in dispute that the petitioner was released on interim bail as many as on 7 occasions and he has never misused the liberty so granted to him. The custody period of the petitioner as borne out from the nominal roll is 6 years 3 months and 21 days as on 16.01.2025.

14. Apart from the merits of the case, another important factor which has to be considered while deciding the bail application is the delay in the commencement and conclusion of the trial. The prosecution has cited as many as 21 witnesses but till date only 15 witnesses have been examined. It is also not in dispute that this position is continuing for the past many years. Evidently, the trial will not be concluded anytime in near future and the petitioner cannot be kept in custody to await the outcome of trial, especially when at this stage there is presumption of innocence in favour of the petitioner.

15. Further, it is not the case of the prosecution that the petitioner is at flight risk and or he has any criminal antecedents.

16. Considering the aforesaid circumstances in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 20,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/Trial Court/ Duty Magistrate, 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 he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner shall share his permanent address with the IO and shall not change the same without prior intimation to him.
- d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses/family of the deceased.

- 17. The petition stands disposed of in the above terms.
- 18. 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.
- 19. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
- 20. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

FEBRUARY 13, 2025

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