



2024 : DHC : 4083



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20th May, 2024

+ **BAIL APPLN. 2478/2023**

ROSHAN

..... Applicant

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Abdul Salam, Advocate.

For the Respondent : Mr. Utkarsh, APP for the State for the State
alongwith Inspector Umed Singh (PS Gokul
Puri)

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 for seeking bail in FIR No. 321/2016 dated 17.05.2016, registered at Police Station Gokal Puri, for the offences under Section 363 of the Indian Penal Code, 1860 ('IPC'). Chargesheet was filed against the applicant for the offences under Sections 363/302/201 of the IPC.



2. The FIR was registered on a complaint made by the complainant alleging that his 3 year old daughter (victim) had taken some money from the wife of his younger brother (the applicant) and gone out to eat some street food. It was alleged that the victim did not come back and despite all efforts, the complainant was unable to find her.

3. On 18.05.2016, information was received that a quarrel had happened at H.No. 455, Gali No. 4/5, Indra Vihar, Mustafabad, Delhi-110094. Thereafter, information was received that a dead body had been recovered. It is alleged that the police found that there was no quarrel, but the body of the victim had been recovered from the drawer of the bed of the complainant's brother, namely, Aftab Alam (the then husband of the applicant), at the aforesaid address.

4. It is the case of the prosecution that the complainant and his brother were living in the same house with their families. It is alleged that the applicant was upset due to the alleged affair between the mother of the victim (sister-in-law of the applicant) and her husband. It is alleged that on the date of the incident, the victim was sleeping and the other family members had gone out, when the applicant murdered the victim out of anger.

5. It is alleged that the applicant disclosed that the applicant closed the mouth of the victim and then tied her mouth with a dupatta. Thereafter, the applicant allegedly threw the victim in her bed. Later,



the applicant allegedly lied that the victim was out playing with other kids on the street.

6. It is alleged that the body of the victim was discovered when the other members of the family noticed the stinking smell coming from the room of the applicant.

7. The learned counsel for the applicant submitted that the applicant has clean antecedents and has been falsely implicated in the present case. He submitted that the father of the applicant had made complaints to the concerned authorities regarding her false implication but no enquiry was done in that regard.

8. He submitted that there is no eye witness in the present case and the entire prosecution story is based on circumstantial evidence. He submitted that the testimony of the witnesses that have been examined are contradictory.

9. He further submitted that the dead body was not recovered at the instance of the applicant. The same was recovered from the then husband of the applicant, who has been discharged without examination. He submitted that the husband of the applicant divorced her while she was in custody.

10. He submitted that the applicant was released on interim bail by a Coordinate Bench of this Court by order dated 27.07.2020 and her interim bail was extended from time to time. He submitted that the applicant was granted interim bail on account of HPC guidelines by



the learned Trial Court *vide* order dated 02.06.2021 as well. He submitted that the applicant had surrendered on time on both instances and had never misused the liberty.

11. He submitted that only 18 out of 30 witnesses have been examined yet and the formal witnesses are yet to be examined. He submitted that the applicant has spent more than five years in custody and the trial is likely going to take a considerable amount of time.

12. The learned Additional Public Prosecutor for the State strongly opposed the grant of any relief to the applicant. He submitted that the offences involved in the present case are heinous in nature. He submitted that the victim was last seen with the applicant.

13. He submitted that the nominal roll of the applicant indicates that the jail conduct of the applicant is non-satisfactory. He submitted that the applicant broke jail rules and was involved in a number of other offences while in custody, including her alleged involvement in jail riots.

ANALYSIS

14. The allegations in the present case are grave and heinous in nature. The victim aged 3 years is alleged to have been killed by the applicant, who also happened to be her aunt, on suspicion that her husband was having an extra-marital relationship with the mother of the deceased victim.



15. It is, however, not disputed that the entire case is primarily based on the alleged extra-judicial confession of the applicant. It is trite law that an extra judicial confession cannot be relied upon unless it inspires confidence or is fully corroborated. Extra judicial confessions are weak pieces of evidence, whereby it is incumbent on the Courts to exercise extra caution while examining the same.

16. At this stage, it cannot be denied that there is no direct evidence against the applicant and she has been implicated solely on the basis of the circumstances allegedly leading to the death of the victim, such as the victim having been allegedly last seen with the applicant. It is pertinent to note that the applicant admittedly used to stay in the same house as the victim.

17. It is also not denied that the allegations in the present case are only made by the family members of the victim and the ex-husband of the applicant. There is no eye-witness to the commission of the alleged offence.

18. It is settled law that when the case is based solely on circumstantial evidence, the chain of circumstances has to be so complete that it leaves no reasonable ground for any other conclusion except for the hypothesis of guilt of the accused person.

19. The allegations along with the defences would be considered during the course of the trial.



20. Admittedly, only 18 out of 30 witnesses have been examined till date and the trial would take a considerable period of time.

21. The Hon'ble Apex Court in the case of *Union of India v. K.A. Najeeb* : AIR 2021 SC 712 held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

22. It is also pointed out that the child of the applicant is now in custody her ex-husband, who divorced her during the pendency of the case.

23. The applicant, being a woman, is undeniably entitled to special consideration while dealing with the question of bail, in terms of the proviso to Section 437(1) of the CrPC.

24. In view of the above, the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹20,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM/ Link MM, on the following conditions:

- a. The applicant shall provide the address where she would be residing after the release and shall not change the address without informing the concerned IO/ SHO;
- b. The applicant shall appear before the learned Trial Court as and when directed;



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- c. The applicant shall under no circumstance leave the country without the permission of the Court;
 - d. The applicant shall, upon her release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.
25. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal.
26. The present application is allowed in the aforesaid terms.
27. It is clarified that the observations made hereinabove are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

MAY 20, 2024

KDK