



2024:DHC:7533



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

Date of decision: 30<sup>th</sup> SEPTEMBER, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 2610/2024**

RASHIDA KHATOON

.....Petitioner

Through: Mr. M.K. Arora, Advocate.

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for  
the State.

Insp. Praveen Kumar Yadav, PS Moti  
Nagar

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The Petitioner has approached this Court for grant of regular bail in FIR No.229/2019 dated 12.05.2019 registered at Police Station Moti Nagar for offences under Section 307, 323, 506, 509 & 34 IPC.
2. Material on record discloses that on 12.05.2019, an information *vide* DD No.07A regarding a quarrel at WZ-55, Basai Darapur, Delhi was received. The Police reached the spot and it was found that the injured has been sent to ABG Hospital Moti Nagar, Delhi. The Police reached ABG Hospital where the injured Anmol Tyagi S/o Dhruv Raj Tyagi and the injured Dhruv Raj Tyagi were found under treatment *vide* MLC No.29331/19 & MLC No.29330/19 which were received by the Police.
3. It was stated that both these injured were unfit for statement and they were referred to RML Hospital. The Police reached the RML Hospital



wherein the injured Anmol was found fit for statement. The statement of Anmol Tyagi was recorded wherein it was stated that he is residing at WZ-55, Basai Darapur, Delhi and he is studying in BA first year. He stated that since his elder sister Nillika was not well, his father Dhruv Raj Tyagi took his elder sister Nillika at Acharya Shri Bhikshu Govt. Hospital, Moti Nagar, Delhi.

4. It is stated that way back home, his neighbour Raja, S/o Jahangir R/o WZ-57A, Basai Darapur, commented on his sister Nilika. It is stated that after leaving his sister, his father and he came back to the same place to talk to Raja. It is stated that the said Raja, his mother, his sister and his father Jahangir and his brother Durge came there and they started abusing them.

5. It is stated that on hearing the noise, his sister Nillika also came there. It is stated that the said Raja strangulated his sister and started misbehaving with her and they attacked him and his father with knife. It is stated that his father was stabbed in the abdomen.

6. It is stated that since people from the neighbourhood gathered, all these persons ran away. It is stated that Raja's mother and his sister had also beaten his sister Nilika, who had come there. On the said statement, the instant FIR being FIR No.229/2019 dated 12.05.2019 registered at Police Station Moti Nagar for offences under Section 307, 323, 506, 509 & 34 IPC.

7. Since, Dhruv Raj Tyagi expired during treatment at RML Hospital, an offence under Section 302 IPC was added in the present case. Statements of the Complainant and his sister Nilika were recorded under Section 164 CrPC. In the statement under Section 164 CrPC, the sister of the Complainant had reiterated what is stated in the complaint. She also stated that the Petitioner herein caught hold of her hair and her shoulders. She also



stated that they also prevented the Complainant and the deceased from going to the hospital.

8. Chargesheet has been filed for offences under Section 307, 302, 323, 354, 506, 509 & 34 IPC. The trial has commenced and all the eyewitnesses have been examined.

9. Learned Counsel for the Petitioner states that the Petitioner is in custody since 15.05.2019, barring some period during the COVID-19 pandemic, she has been in incarceration. He states that all the eyewitnesses have been examined and there is no possibility of tampering with any evidence.

10. *Per contra*, learned APP for the State opposes the grant of bail stating that the family has been attacked in a very gruesome manner and they have been brutally stabbed by the accused persons. It is stated that the Petitioner had a very important role in the entire incident. It is stated that the possibility of the Petitioner fleeing away from justice cannot be ruled out.

11. The parameters of grant of bail have been laid down by the Apex Court in several judgments. In Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., 2010 (14) SCC 496, the Apex Court has observed as under:-

*“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*



- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

*[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]*

**10.** *It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of*



us (D.K. Jain, J.) was a member, observed as follows :  
(SCC p. 290, para 13)

*“13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”*

*(See also State of Maharashtra v. Ritesh [(2001) 4 SCC 224 : 2001 SCC (Cri) 671] , Panchanan Mishra v. Digambar Mishra [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] , Vijay Kumar v. Narendra [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Anwari Begum v. Sher Mohammad [(2005) 7 SCC 326 : 2005 SCC (Cri) 1669] .)”*

12. The Apex Court in Neeru Yadav v. State of U.P., (2014) 16 SCC 508, has observed as under:-

*“9. In this context, a fruitful reference be made to the pronouncement in Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 : 2002 SCC (Cri) 688 : AIR 2002 SC 1475] , wherein this Court has observed that grant of bail though discretionary in nature, yet such exercise cannot be arbitrary, capricious and injudicious, for the heinous nature of the crime warrants more caution and there is greater change of rejection of bail, though, however dependant on the factual matrix of the matter. In the said decision, reference was made to Prahlad Singh Bhati v. NCT of Delhi [Prahlad Singh Bhati v. NCT of Delhi, (2001) 4 SCC 280 : 2001 SCC (Cri) 674 : (2001) 2 SCR 684] and the Court opined thus : (Sudarshan Singh case*



*[Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 : 2002 SCC (Cri) 688 : AIR 2002 SC 1475] , SCC p. 602, para 4)*

*“(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*

*(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.*

*(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*

*(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

**10.** *In Chaman Lal v. State of U.P. [Chaman Lal v. State of U.P., (2004) 7 SCC 525 : 2004 SCC (Cri) 1974] , the Court has laid down certain factors, namely, the nature of accusation, severity of punishment in case of conviction and the character of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and prima facie satisfaction of the Court in support of the charge, which are to be kept in*



*mind.”*

13. The aforesaid principles laid down by the Apex Court have been re-stated in several other subsequent judgments, *viz.*, Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 and Mahipal v. Rajesh Kumar, (2020) 2 SCC 118.

14. A perusal of the material on record indicates that the Petitioner herein has no role in the injuring or stabbing the victims. The role of the Petitioner is that she caught hold of the sister of the Complainant and not the victim and she was not involved in the stabbing of the victim. The Petitioner is a 30 year old lady. She has been in incarceration since 15.05.2019. It is well settled that bail is neither punitive nor preventive. Applying the law laid down by the Apex Court, this Court is inclined to grant regular bail to the Petitioner on the following conditions:-

- i. The Petitioner shall furnish a personal bond in the sum of Rs.1,00,000/- with two sureties of the like amount, one of them being a relative of the Petitioner, to the satisfaction of the Trial Court.
- ii. The Petitioner shall furnish an address to the Trial Court where she would reside and the same would be verified by the Investigating Officer before the satisfaction of the Trial Court is recorded.
- iii. The Petitioner shall appear before the concerned Police Station on every Monday, Wednesday and Friday at 10:00 AM and shall be released by 11:00 AM after completing all the formalities.
- iv. The Petitioner shall not leave the city of Delhi without the prior



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- permission of the Trial Court.
- v. The Petitioner shall surrender her Passport, if any, with the Trial Court.
  - vi. The Petitioner shall not tamper with any evidence or contact the family members of the deceased directly or indirectly.
15. With these observations, the bail application is disposed of along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**SEPTEMBER 30, 2024**

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