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

Delivered on: 29th September, 2015

\+ **CRL.M.C.No.2520/2015**

SAROJ ..... Petitioner
Represented by: Mr. B.S. Joon & Mr.Siddharth Joon, Advs.

versus

CHARAN SINGH AND ANR ..... Respondents
Represented by: Mr.Sumit Choudhary, Adv for respondent No.1.
Mr. Amit Chadha, APP for State with Inspr. P.D. Singhal, PS-Narela.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, petitioner seeks direction thereby setting aside the order dated 21.05.2015 passed by learned Additional Sessions Judge, Rohini Courts, Delhi whereby granted bail to respondent No.1-Charan Singh in case FIR No.238/2014 registered at PS Narela for the offences punishable under Sections 302/34 of the IPC.

2. The present petition has been filed on the ground that learned Trial Court has totally ignored the factors to be considered at the stage of disposal of bail application as laid down by the Supreme Court in

the case of ***State through CBI vs Amarmani Tripahti*** *2005 III AD (Crl) SC 665* wherein held that nature and gravity of the charge, severity of the punishment, danger of the accused absconding or fleeing, character, behaviour, means, position and standing of the accused, likelihood of the offence being repeated, reasonable apprehension of the witnesses being tampered with, danger of justice being thwarted by grant of bail and effect upon the general public is to be seen while granting bail to the accused.

3. The Trial Judge has also failed to appreciate that respondent No.1 and other accused persons involved in the commission of the offence alongwith their relatives and goons who were threatening the witnesses from the beginning as a result of which, PW1 Jai Parkash the only eye witness was given police protection by the police station Narela till his statement was completed.

4. It is contended that learned Trial Court has failed to appreciate that report of the FSL in favour of prosecution case proving that blood stains matched with the blood group of deceased were detected upon the clothes of the respondent No.1 which were recovered at his instance after the arrest. Moreover, at an earlier occasion also, respondent No.1 had moved an application for interim bail on the ground of illness of his wife. On enquiry, the same was found to be incorrect. Accordingly, his application for interim bail was rejected by learned Trial Court on 21.08.2014.

5. Learned counsel appearing on behalf of petitioner submitted that respondent No.1 was not suffering from any ailment or disease and he

is in good state of health being a former wrestler. Respondent No.1 had played a very active role in the crime and caught hold of the deceased from back and thereafter, other three accused persons inflicted as much as 23 knife injuries upon the person of the deceased.

6. He further submitted that learned Trial Court has ignored the material fact that accused persons including respondent No.1 committed the murder of Ranbir Singh husband of petitioner in most gruesome, diabolical cruel and inhuman manner after giving several knife blows to a helpless and innocent person.

7. Learned counsel further submitted that on 31.05.2015, wife of deceased, petitioner herein was threatened in the market in the area of R. K. Puram by an unknown person to face dire consequences if the matter is not settled by her. To this effect, PW12 Smt.Saroj, wife of deceased also informed learned Trial Court about the said incident, but no appropriate action was taken. It is also argued that PW1 – eye witness, PW2 another material witness and other witnesses examined so far have fully supported the prosecution case.

8. While concluding the arguments, learned counsel for petitioner has heavily relied upon the case of ***Amarmani Tripathi*** *(supra)* wherein it has been held by the Supreme Court as under:-

> *"19. It is well settled that the matters to be considered in 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 charge; (iii) severity of the punishment in the event of conviction; (iv) danger of 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 tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see ***Prahlad Singh Bhati vs. NCT, Delhi*** *2001 (4) SCC 280 and* ***Gurcharan Singh vs. State (Delhi Administration)*** *AIR 1978 SC 179). While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in* ***Kalyan Chandra Sarkar vs. Rajesh Ranjan****, 2004 (7) SCC 528:*

> *"The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*
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> *a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
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> *b. Reasonable apprehension of tampering with the witness or apprehension of threat to the*

complainant.

c. Prima facie satisfaction of the court in support of the charge.(see ***Ram Govind Upadhyay vs. Sudarshan Singh****, 2002 (3) SCC 598 and* ***Puran vs. Ram Bilas*** *2001 (6) SCC 338."*

20. This Court also in specific terms held that:

"the condition laid down under section 437(1)(i) issine qua non for granting bail even under section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

21. In ***Panchanan Mishra vs. Digambar Mishra,*** *2005 (3) SCC 143, this Court observed:*

"The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at

> *liberty by the bail order from tampering with the evidence in the heinous crime..... It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation."*

9. Learned counsel for petitioner submitted that the age and ailment cannot be ground for bail as held in case of ***Smt.Lahari Bai vs State of Rajasthan 1996 Crl L J 1400*** as under:-

> *"4. It was also submitted by learned counsel that this Court in number of cases have released the accused on bail, on the ground that the accused is a lady or looking to her old age. I am of the confirm view that in such cases bail should not be granted. That view I have taken while sit6ting as a Judge of Gujarat High Court in many cases and some of them are even reported in Gujarat Law Reporter. My view has not been so far been disturbed by the Apex Court. The bail applications are to be decided on the facts of each case. Considering the totality of the evidence, I am of the view that though the petitioner is an aged lady of 75 and that she may not be keeping good health but she is not entitled for bail on that ground in such cases."*

10. On perusal of the order dated 21.05.2015, the learned Trial Court recorded therein that respondent No.1/accused is 70 years senior citizen suffering from various old age ailments and arrested on 24.02.2014 and since then he is in custody. Out of 26 prosecution

witnesses, 12 witnesses have already been examined including the public/material witnesses. The role attributed to respondent No.1/ accused is of caught holding only, though as per prosecution case, he has actively participated in the crime. The paramount consideration of the bail during trial is availability of accused to face trial. There is no likelihood that he may threaten the public witnesses or may tamper with the evidence as the statement of public/material witnesses have already been recorded.

11. Learned Trial Court has further recorded that since the respondent No.1 is of 70 years and there is no likelihood of any absconding or fleeing from justice as his son and grandsons are also in custody and he is a permanent resident of Delhi and even not previously involved in any offence. Accordingly, learned Trial Judge granted bail with the following conditions:-

> *"i) That he shall not try to meet the family of the deceased;*
> *ii) That he shall not try to meet any prosecution witnesses;*
> *iii) That he shall not try to temper with the evidence;*
> *iv) That he shall not leave Delhi without the permission of the court;*
> *v) That he shall appear in the court regularly."*

12. The law for grant of bail and cancellation thereof are altogether different. The bail granted to accused during trial cannot be cancelled unless there being any exigency to endanger the chance of fair trial due to enlarging the accused on bail. On this issue, The Apex Court in ***Dolat Ram and others vs State of Haryana (1995) 1 SCC 349*** observed as under:-

> *"4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a nonbailable case in the first instance and the cancellation of bail already granted."*

13. It is not in dispute that examination of PW12 / petitioner had not completed at the time of passing of the order, however thereafter he evidence, who is none other than wife of deceased has been completed. No material witness remains to be examined. It cannot be disputed that that old age and ailment only cannot be grounds for granting bail. However, the Trial Judge has seen totality of the case and accordingly not only considered his age as 70 years old, but also that his whole family including son and grandsons are in custody; her remained in jail

for 15 months; all material witnesses including the petitioner / PW12 have been examined.

14. Moreover, respondent No.1 has not violated any of the conditions imposed by learned Trial Court. As alleged by petitioner that on 31.05.2015, she received threat from an unknown person, but it does not establish that respondent No.1 is the same person. The petitioner has failed to bring any material to establish that respondent no.1 has violated any condition imposed by the trial judge.

15. In view of the legal position and discussion noted above, I find no illegality, perversity in the order dated 21.05.2015 passed by learned Trial Court.

16. Consequently, instant petition is hereby dismissed being devoid of any merits.

SURESH KAIT
(JUDGE)

SEPTEMBER 29, 2015
M/RS