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

% **Date of Decision : 19th November, 2012**

+ BAIL APPLN. 1565/2012

GOPAL GOYAL

..... Petitioner

Through : Mr.Mukul Rohatgi and
Mr.Ramesh Gupta, Senior
Advocates instructed by Mr.Rajiv
Sirohi, Mr.Kapil Sankhla,
Ms.Meghna Sankhla, Ms.Diksha
and Mr.Bharat Sharma, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through : Mr.Sidharth Luthra, Addl.
Solicitor General & Mr.Rajesh
Mahajan, Addl. Standing Counsel
for State with Mr.Pramod Kumar
Dubey, Mr.Yashpreet Singh,
Mr.Shiv Pandey, Mr.Amit Singh
Rathod, Mr.Rohit Gupta,
Advocates.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

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1. This is an application moved under Section 439 CrPC read with Section 482 CrPC by the petitioner Gopal Goyal praying for bail in case FIR No.178/2012 under Sections 306/506/201/120-B/466/467/468/469/

471 read with Section 34 IPC and under Section 66-A of I.T. Act, PS Bharat Nagar, Delhi.

2. Reply to the bail application has been filed by the State.
3. On behalf of petitioner, it has been submitted that earlier anticipatory bail application was filed by the petitioner which was dismissed by this Court vide order dated 17.08.2012. Thereafter petitioner surrendered and application seeking regular bail was filed by him which was dismissed vide order dated 20.09.2012 by I/C ASJ (North West), Rohini mainly for the reason that investigation was at the initial stage and release of accused was likely to hamper the investigation, if granted bail.
4. Mr.Mukul Rohatgi, learned Senior Counsel for the petitioner has submitted that investigation is complete and charge sheet has already been filed in this case. With reference to the objection taken by the State in the reply that bail application was not filed before the Court of Session before moving the High Court, he submitted that the application before the Court of Session for release on bail was not filed for the reason that the application for grant of bail filed by the co-accused has already been dismissed by learned ASJ. Since the petitioner was referred to as main accused, no purpose would have been served in that situation to file bail application before learned ASJ by this petitioner and that under Section 439 CrPC, this Court has concurrent jurisdiction to deal with the bail application so there is no legal requirement requiring the petitioner to first approach the Court of Session before filing application under Section 439 CrPC in High Court.

5. While referring to the sequence of events leading to commission of suicide by Geetika Sharma, it has been submitted that as per record, she joined MDLR Airlines on 18th October, 2006. She has committed suicide on the intervening night of 4th/5th August, 2012. Thus, she has committed suicide after almost about six years of her joining the company of the petitioner. It has been submitted that at the most, it can be a case of infatuation of the petitioner for the deceased but in that circumstance, he would like her to be with him and not instigate her or create a circumstance compelling her to take the extreme step. Referring to the alleged abortion got done by Geetika Sharma, it has been submitted that there is no material on record to suggest that he has taken her to the doctor or made any telephone call or in any manner connected with the said abortion.

6. It has been further submitted that the family of the deceased and that of the petitioner were having good relations so much so that on 25.06.2012 Geetika Sharma joined MBA in IILM College which was sponsored by the company of the petitioner. The allegations made in suicide note are general in nature and mere reading of the same does not suggest as to how the petitioner can be held liable for abetting commission of suicide by Geetika. There might be some turmoil in her mind about which the petitioner had no knowledge and he could not have been said to have abetted, if she committed suicide for whatsoever reason. It has been urged that the petitioner cannot be kept in custody by way of punishment and no purpose is going to be served by detaining him in custody when investigation is already complete.

7. Referring to the charge sheet wherein it is mentioned that further investigation is on, it is submitted that FIR was registered under Section 306 IPC and subsequently other offences have been added. Charge sheet has been submitted and if any further investigation is to be conducted, on this very ground, the bail cannot be denied to the petitioner.

8. Referring to the alleged pressure on deceased to return from Dubai, Mr.Mukul Rohatgi, Learned Senior Counsel has submitted that this Court should take note of the date when the deceased left for Dubai, when she returned from there and when she joined the company of the petitioner. Referring to various date, he submitted that after leaving the company of the petitioner, she left on 29th June, 2010 and returned on 24th August, 2010 but joined the petitioner's company only on 13th January, 2011 as Director at MDLR Corporate Officer. This time gap between her return from Dubai and joining the company of the petitioner itself shows that there was no pressure on her to join the petitioner's company. While praying for grant of bail to the petitioner as investigation is complete, it was urged that record regarding mobile phone is available with the service provider which cannot be tampered with by the petitioner. He has never absconded and he was only seeking his remedy under the law to obtain anticipatory bail. On 17th August, 2012, his anticipatory bail application was dismissed and on the very next day i.e. on 18th August, 2012, he surrendered in this case and since then he is in custody.

9. Learned Senior Counsel of the petitioner has submitted that no doubt, a young life has been lost but petitioner cannot be punished by detaining him custody even before he is convicted when investigation is

complete and whatever material, the prosecuting agency wants to prove on record, has been collected. Further investigation in the case may continue for an indefinite time and that cannot bar the relief of bail to the petitioner. Referring to the status of the petitioner, it has been submitted that he is MLA and was also a Minister in Haryana. He has roots in society and there is no chance of his fleeing from justice, he will face trial but during pendency of trial, he should be allowed to remain on bail as neither there is any apprehension of tampering with the evidence nor of his absconding during trial. Learned Senior Counsel for the petitioner has placed reliance on (1) *Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 Supreme Court Cases (Cri) 26*; (2) *Dasrath vs. State of Madhya Pradesh (2010) 12 Supreme Court Cases 198*; (3) *Madan Mohan Singh vs. State of Gujarat and Another (2010) 8 Supreme Court Cases 628*; (4) *Ramesh Kumar vs. State of Chhatisgarh 2002 Supreme Court Cases (Cri) 1088*; (5) *Sohan Raj Sharma vs. State of Haryana (2008) 11 Supreme Court Cases 215*; (6) *Sanju @ Sanjay Singh Sengar vs. State of M.P. 2002 Supreme Court Cases (Cri) 1141* and (7) *Shri Ram vs. State of U.P. 1975 Supreme Court Cases (Criminal) 87* in support of his contention that no case for abetment of suicide is made out against the present petitioner and no purpose will be served by detaining him in custody, hence he may be enlarged on bail.

10. Mr. Sidharth Luthra, learned Addl. Solicitor General for State has contended that the petitioner has filed his bail application suppressing the material facts including the bail order passed by Court of Session in the case of co-accused. The petitioner has also not approached the Court of Session to seek bail after filing of the charge sheet and directly

approached the High Court which is improper. He has further submitted that on merits also, the bail should not be granted to the petitioner as he is highly influential person and if released on bail, likely to prejudice the case of prosecution by influencing the witnesses. Learned Addl. Solicitor General for State has referred to the newspaper reports and the photos of hoardings, placed on record wherein the petitioner was shown to be the Chief Guest for the function to be held on 14th November, 2012 despite the fact that he had not been granted bail by any Court for that date.

11. Referring to the post-mortem report wherein it was opined that ‘there are findings to suggest that the deceased was habituated to vaginal and anal penetration’, it has been submitted that this cannot be termed as infatuation and as an individual, she had every right to say ‘NO’ to all these things. He also referred to the suicide note wherein apart from co-accused, the petitioner had been made responsible for compelling her to take the extreme step. He also referred to the statement of the mother and brother of the deceased just preceding the dates when she committed suicide in support of his contention that she was being pressurized to join the company of the petitioner and when the deceased felt that she was left with no other option, after writing suicide note, she took the extreme step.

12. Mr.Sidharth Luthra, learned Addl. Solicitor General for State has further submitted that the petitioner has already tampered with the evidence by destroying the hard disc and mobile phone for which he has also been chargesheeted for committing the offence punishable under Section 201 IPC.

13. Learned Addl. Solicitor General for State has referred to the charge sheet to show that as to in what manner the deceased was instigated and a situation was created wherein she had no option but to take the extreme step which were detailed in pages No.33 to 37 of the charge sheet. It has been further submitted that seven prosecution witnesses are employees of the petitioner and if he is enlarged on bail, he is likely to influence these witnesses. While opposing the prayer for release of petitioner on bail, Mr.Sidharth Luthra, learned Addl. Solicitor General, has relied upon (1) *Amit Kapoor vs. Ramesh Chander and Anr. (2012) 9 Supreme Court Cases 460* and (2) *Pratapbhai Hamirbhai Solanki vs. State of Gujarat and Another JT 2012 (10) SC 286*.

14. Learned Addl. Solicitor General for State has also submitted that the case is at the stage of committal and this Court may direct that matter be heard on day-to-day basis and trial be expedited. The prosecution will make efforts to get the trial concluded within six months.

15. First of all, I deal with the contention of the parties as to whether without moving the Court of Session, the petitioner could have filed bail application before this Court. In this regard, reference can be made of *Smt. Manisha Neema vs. State of M.P. 2003 (2) MPLJ 587* wherein it was observed as under :

'Long back, this Court, in the case of Dainy alias Raju v. State of M.P. (1989 JLJ 232) Hon. Justice R.C. Lahoti (now Judge of the Supreme Court) has held that though under Sections 438 and 439 of the Cr.PC there is concurrent jurisdiction, but the application should be filed first before the Court of Session and on failure before that Court, the application should be filed before the High

Court accompanied with the first order of Sessions Court and also mentioning all the relevant facts. His Lordship, in Paras 19, 20 and 21 has given detailed reasons for holding so. For convenience, the same are reproduced below :--

"19. The jurisdiction of High Court and Court of Session under Section 439, Cr.PC being concurrent, as a matter of practice, the bail applicants are required ordinarily to approach the Court of Session in the first instance and if relief is denied they approach the High Court under Section 439, Cr.PC itself, not as a Superior Court sitting in appellate or revisional jurisdiction over the order of the Court of Session, but because the Superior Court can still exercise its own jurisdiction independently, unaffected by the result of exercise by the Court of Session because the latter is an Inferior Court though vested with concurrent jurisdiction. The application seeking bail before the High Court is accompanied by an order of the Court of Session rejecting a similar prayer. The idea is to provide the Superior Court with an advantage of apprising itself with the grounds as considerations which prevailed with the Court of Session in taking the view which it did. It has come to my notice in several cases that the first order of the Court of Session rejecting a prayer for bail is a detailed order and when another application is repeated before the same Court, the subsequent order rejects the application simply by stating that earlier application having been rejected on merits, the Court did not see any reason to take different view of the matter. The latter order is not a detailed one. This subsequent order is filed before the High Court to fulfil the formality but the inevitable consequence is that the High Court is deprived of the opportunity of apprising itself with the reasons which formed foundation for rejection of the prayer by the Sessions Court. The possibility cannot be ruled out that such a course is adopted purposely because the bail applicant does not feel comfortable before the High Court in the presence of a detailed order of the Court of Session rejecting the prayer for bail.

To sum up the disciplines of the system are :--

(i) in view of the decision of the Apex Court in Shahzad Hasan Khan (supra), a subsequent application for bail in the same jurisdiction, must be placed before the same Judge (so long as he is available) before whom had come up the earlier application, with whatever result.

(ii) a subsequent application for bail must mention all the earlier or pending attempt to that and made before the High Court as well as the Court of Session alongwith their fate.

(iii) while moving an application for bail before the High Court, the application ought ordinarily to be accompanied by the order of the Court of Session rejecting the first prayer for bail and containing reasons, unless dispensed with.

(iv) a bail petition is expected to incorporate a statement as to all facts and circumstances considered relevant by the applicant in support of his prayer so that whatever is putforth before the Court does not vanish in thin air, but is retained in the record, though there is no format prescribed for bail applications; if any statement is likely to be controverted by the opposite party, the party would do well to support its statement by an affidavit or documents, as advised.

A question may be posed whether these requirements falling within the domain of format or procedural requirements only, laying down rules of discipline only can be treated so imperative as to override the substantive law of bails, negating the right or privilege for failure of compliance therewith. The requirements have a laudible purpose, principle and policy behind. They have been projected by judicial wisdom founded on judicial experience. The rightful result must be achieved by rightful means. That is the rule of law. If bifocul interests of justice to the individual involved and the society affected [as spoken of in Babusingh and others (supra)], are to be secured, if fallacies as to bail jurisdiction are to be removed; if fairness in dispensation of criminal justice has to be retained, nay brightened, if abuse of process of law is to be avoided, and if unwanted practice/tactics are to be curbed; these rules of discipline have to be treated as

imperative. A failure to observe them may be destructive of the very purpose sought to be achieved."

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A bald reading of these paragraphs vis-a-vis the application filed by the applicant together, the application of the applicant is not satisfying the test.

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The view taken in the case of Dany alias Raju (supra), by this Court has also been taken in the case of Abdul Rashid Khan v. State of M.P. [1993 (1) MPWN 35]. It is held in this case that "though this Court has concurrent jurisdiction with the Court of Session under Section 438 and 439, Cr.PC yet the petitioner ought to have approached the Court of Session at the first instance which could have examined the facts and passed a suitable order and may be that in case the petitioner was not required to apply to this Court". But, this application was finally heard by this Court, because the same was admitted for final hearing.

Again, this Court has taken the view in the case of Madan Mohan Kichloo v. State of M.P. and Anr. [1996 (II) MPJR 400] that though concurrent jurisdiction for filing the application under Section 439, Cr.PC either before the Sessions Court or the High Court, but in view of the judgment passed by the Supreme Court in Gurcharan Singh and Ors. v. State (AIR 1978 SC 179), it is the duty of the petitioner to have approached the Court of Magistrate initially.

Considering all these judgments of this Court, Le., (1) Dany alias Raju v. State of M.P. (1989 JLJ 323), (2) Abdul Rashid Khan v. State of M.P. [1993 (1) MPWN Note 35] and (3) Madan Mohan Kichloo v. State of M.P. and Anr. [1996 (II) MPJR 400], this Court is of the opinion that in the light of the observations and directions made by this Court in Paras 19, 20 and 21 on Dany's case (supra), the applicant should have filed the application at the

first instance before the Court of Session and thereafter, if it was rejected, he could have approached this Court.'

16. However, since this bail application is listed for hearing and the petitioner is reluctant to move the Court of Session in view of the dismissal of the bail application of the co-accused, his bail application is being heard.

17. The petitioner is seeking bail in a case under Sections 306/506/201/120-B/466/467/468/469/471 read with Section 34 IPC and under Section 66-A, I.T. Act. The gesture of the prosecution to expedite the trial and conclude within six months, though deserves to be appreciated but when the case is yet to be committed to the Court of Session and trial is yet to begin, it is not desirable at this stage to pass any direction to conduct trial on day to day basis and conclude it within six months.

18. The learned senior counsel for the petitioner has placed reliance on ***Sanjay Chandra vs. Central Bureau of Investigation*** (Supra) emphasizing that the approach of the Court should be to enlarge the petitioner on bail rather than to keep him in custody for an indefinite period. I find that the observations made to the above effect in Sanjay Chandra's case are of no benefit to the petitioner for the reason that in Sanjay Chandra's case the Apex Court has taken into account that longest sentence in that case which could be awarded, was 7 years and the documentary evidence was so voluminous that the trial would have taken long time to conclude, so much so, that lengthy trial may prolong beyond maximum sentence awardable under the relevant law.

19. In the case of ***Kalyan Chandra Sarkar vs. Rajesh Ranjan 2004 CriLJ 1796***, it was held that :

'The mere fact that the accused has undergone certain period of incarceration by itself would not entitle the accused to be enlarged on bail nor the fact that the trial is not likely to be concluded in near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the accused on bail when the gravity of the offence alleged is severe.'

20. In the present case, the petitioner has not been chargesheeted for economic offence nor trial is likely to take a long time. Mr.Sidharth Luthra, learned Addl. Solicitor General has already submitted that trial will be conducted expeditiously in this case.

21. Reliance placed by learned senior counsel for the petitioner on ***Dasrath vs. State of Madhya Pradesh*** (Supra) is misplaced as it was an appeal preferred before Hon'ble Supreme Court in a dowry death case after the appeal was dismissed by the High Court.

22. The petitioner has also placed reliance on ***Madan Mohan Singh vs. State of Gujarat and Another*** (Supra) wherein it was a case registered under Sections 306 & 107 IPC. In the said case suicide was committed by the driver blaming his superior officer in the suicide note. Petition filed under Section 482 Cr.P.C. for quashing was dismissed by the High Court against which criminal appeal was preferred before the Supreme Court. While dealing with the situation as existing in that case, it was held that merely because a person had grudge against his superior officers and committed suicide on account of that grudge even honestly feeling that he was wronged, it would not be a proper allegation for basing the charge under Section 306 IPC. In the present case, the

relationship between the deceased and the petitioner is not alleged to be restricted to that of employee-employer only. The abortion, post-mortem report and suicide note indicate that the extreme step was allegedly taken by the deceased not because of existence of a normal employer-employee relationship, but for the relations other than that.

23. Similarly, I find that reference made by learned senior counsel for the petitioner to the decision of *Ramesh Kumar vs. State of Chhatisgarh* (Supra) wherein wife committed suicide for which the husband was held responsible, has no application to the facts of the present case, as in that case on being convicted for commission of offence under Section 498-A IPC, on the basis of presumption drawn under Section 113A of the Evidence Act, the appellant/husband of the deceased was convicted under Section 306 IPC. He preferred appeal and it was held that in given facts, presumption under Section 113A of the Indian Evidence Act could not have been drawn to convict him under Section 306 IPC. In the instant case, the charge sheet filed against the accused is not on the basis of any allegation of cruelty under Section 498-A IPC and presumption to be drawn under Section 113A of the Evidence Act.

24. Similarly, reliance placed by learned senior counsel for the petitioner on *Sohan Raj Sharma vs. State of Haryana* (Supra) is of no help to the petitioner. It was a case of suicide by the wife with the allegation that the appellant, her husband was a sexual pervert and behaved like animals and defamed her as being a lesbian. So this case also has no applicability to the facts of the present case.

25. Learned senior counsel for the petitioner next referred to *Sanju @ Sanjay Singh Sengar vs. State of M.P.* (Supra) to emphasize as to what

constitutes instigation. In that case, the appellant moved the High Court under Section 482 Cr.P.C. for quashing of charge without any result, hence preferred appeal before the Apex Court. Suffice is to mention that in the case at hand, this Court is dealing with the bail application and whether prima facie offence under Section 306 IPC is made out against the petitioner or not is yet to be dealt with by the Trial Court. Any discussion on this issue is likely to prejudice the petitioner as well as the prosecution and while dealing with the bail application of the petitioner this Court is not required to give a finding as to whether the facts of the case constitute an offence under Section 306 IPC or not. Hence the reliance placed by the petitioner on Sanju's case is of no use to him.

26. Learned senior counsel for the petitioner has further referred to the case of *Shri Ram vs. State of U.P. 1975 Supreme Court Cases (Criminal) 87* wherein the appellant was tried in a murder case for committing murder of an Advocate and the role attributed to her was that she shouted "Vakil has come" and on her shouting the other accused persons attacked the deceased. After conviction and on dismissal of appeal by the High Court of Allahabad, the appeal by special leave was preferred before the Supreme Court and in the facts of the said case it was held that in view of the concurrent findings of the Courts below that V gave shout cannot be disturbed and it was further held:-

"Whether by so doing she intended to facilitate the murder of K is another question. In order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. It is not

enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107.”

27. This decision has also no relevance while disposing of the bail application of the present petitioner, as this Court does not have to arrive at any conclusion whether the alleged act attributed to the petitioner amounts to abetment or not.

28. Learned Addl. Solicitor General Mr.Sidharth Luthra has placed reliance on ***Amit Kapoor vs. Ramesh Chander and Anr.*** (Supra) to bring on record as to what constitutes abetment. I find that since the said case dealt with framing of charge, while disposing of the bail application, this Court need not to consider whether the material collected by the prosecution constitutes ingredients of the offences for which the petitioner has been chargesheeted.

29. The petitioner is seeking his release on bail mainly on the following grounds:-

(i) The year of joining MDLR Airlines is 2006, whereas suicide has been committed in August, 2012 i.e., almost after a period of six years and this long duration, for which she served MDLR Airlines, shows that she was serving without any grievance.

(ii) The deceased belonged to an educated family and she was living with them. The family of the petitioner and that of the deceased had visiting terms and family relations.

(iii) At the most, as per the prosecution, petitioner was having infatuation for the deceased and if it is taken to be so then the petitioner could not have instigated her to commit suicide.

(iv) The deceased joined MDLR Airlines on 18th October, 2006 as Trainee Cabin Crew and continued to serve till 31st March, 2009. She left MDLR Airlines to join Emirates Airlines, where she worked till 12th August, 2010. She re-joined MDLR Airlines as Director, Corporate Office on 13th January, 2011, which shows that she was under no pressure to join MDLR immediately on her return from Dubai.

(v) The petitioner's company sponsored the deceased to join MBA in IILM College on 25th June, 2012 and Rs.6 lacs were provided for the same which further shows that petitioner facilitated the ambition of deceased to join MBA just about 1½ months prior to this occurrence and could not have abetted the commission of suicide.

(vi) Petitioner has nothing to do with the alleged abortion of the deceased as neither he accompanied her to the Doctor nor in any other way instrumental in getting her abortion done.

(vii) The allegations made in the two notes do not constitute the offence under Section 306 IPC.

(viii) The petitioner is representative of the people as MLA and was also the Minister in Haryana Government, he has roots in the society and there is no possibility of his thwarting the course of justice.

30. In the case *Pratapbhai Hamirbhai Solanki Vs. State of Gujarat and Anr. – 2012 (10) SCALE 237*, the Apex Court had referred to various decisions, laying down the guidelines to be considered by the

Court while granting bail in non-bailable offences. The relevant paras are as under:

*'15. At this juncture, we may refer with profit to certain authorities which lay down the considerations that should weigh with the Court in granting bail in non-bailable offences. This Court in **State v. Capt. Jagjit Singh** MANU/SC/0139/1961 : (1962) 3 SCR 622 and **Gurcharan Singh v. State (Delhi Admn.)** MANU/SC/0420/1978 : (1978) 1 SCC 118 has held that the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case are to be considered. The said principles have been reiterated in **Jayendra Saraswathi Swamigal v. State of T.N.** MANU/SC/0017/2005 : (2005) 2 SCC 13.*

*16. In **Prahlad Singh Bhati v. NCT, Delhi and Anr.** MANU/SC/0193/2001 : (2001) 4 SCC 280, this Court has culled out the principles to be kept in mind while granting or refusing bail. In that context, the two-Judge Bench has stated that while granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is*

not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

*17. In **State of U.P. through C.B.I. v. Amarmani Tripathi** MANU/SC/0677/2005 : (2005) 8 SCC 21, while emphasizing on the relevant factors which are to be taken into consideration, this Court has expressed thus: -*

While a vague allegation that the 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.

In the said case, the Bench has also observed as follows: -

Therefore, the general rule that this Court will not ordinarily interfere in matters relating to bail, is subject to exceptions where there are special circumstances and when the basic requirements for grant of bail are completely ignored by the High Court.

*18. Recently, in **Ash Mohammad v. Shiv Raj Singh @ Lalla Babu and Anr.** JT 2012 (9) SC 155, this Court while dealing with individual liberty and cry of the society for justice has opined as under: -*

It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilized milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organized society the concept of liberty basically requires citizens to be

responsible and not to disturb the tranquility and safety which every well-meaning person desires.

19. We are absolutely conscious that liberty is a greatly cherished value in the life of an individual, and no one would like to barter it for all the tea in China, but it is obligatory on the part of court to scan and scrutinize, though briefly, as regards the prima facie case, the seriousness and gravity of the crime and the potentiality of the accused to tamper with the evidence apart from other aspects before the restriction on liberty is lifted on imposition of certain conditions.'

31. The prosecution has placed on record two notes, one dated 4th May, 2012 and another suicide note dated 4th August, 2012 and suicide has been committed by Geetika on the night intervening 4/5th May, 2012, which indicates that the extreme step has not been taken by Geetika in haste. In what circumstances, she was compelled to take the extreme step is indicated in the charge sheet.

32. The contention of the petitioner that deceased was employed with MDLR Airlines for about six years, except for a short duration when she left for Dubai to join Emirates, is no ground to release him on bail for the reason that the nature of allegations against the petitioner are grave, indicating how on the strength of money power, the deceased was sexually exploited in the garb of employment. Her post mortem report and contents of suicide note indicate that the relationship between the petitioner and deceased was not restricted to that of employer and employee.

33. Learned senior counsel for the petitioner, Mr.Rohtagi submitted that the deceased was living with and belonged to an educated family but

during this long tenure, at no point of time, the parents of the deceased had any grievance. This submission of the learned counsel does not entitle the petitioner to the benefit of being released on bail, as the grievance could have been there only if the parents or the family is aware of the alleged sexual exploitation of the deceased and at this stage when it is claimed that there was family relations between the two families, it cannot be said that whatever was happening, had the approval of the family or they were aware of the physical and mental trauma to which the deceased was allegedly subjected to through which she was undergoing at the time when she decided to put an end to her life.

34. It is settled legal position that the courts are not supposed to explore the merits of the case in detail while considering the prayer for grant of bail, which depends on facts and circumstances of each case.

35. In the instant case, trial is yet to begin and allegations against the petitioner are very serious. A young life has been lost because the deceased felt that despite the petitioner being forgiven number of times, he again misused their innocence and trust. She felt that she was shattered inside and her life had been made abnormal by the persons named in the suicide note.

36. Coming to the issue of release of the petitioner on bail on filing of the charge sheet against him, I am of the view that apprehension of the prosecution that if enlarged on bail, at least seven witnesses, who are employees of the petitioner, are likely to be influenced, is not mis-founded. Further, in view of the submissions made before the Court that before surrendering in this case, material evidence was destroyed by the petitioner for which he has been chargesheeted for the offence

punishable under Section 201 IPC, persuade this Court to decline the relief as in the given facts and circumstances brought on record in the charge sheet, the possibility of tampering with the evidence cannot be ruled out.

37. This Court has to ensure that a fair trial takes place and accused is not in a position to influence the witnesses or tamper with evidence. No doubt, while considering the prayer for release on bail, this Court has to draw a balance between the gravity of the offence and interest of the society by securing justice to the society. In view of the status of the petitioner, he may have roots in the society but at the same time, it cannot be ignored that he is having position and power, thus capable of influencing the witnesses, which may cause serious prejudice to the case of prosecution.

38. The submissions made by learned Addl. Solicitor General that the trial shall be expedited in this case is another reason to decline the prayer for release on bail for the reason that the petitioner has surrendered only on 18th August, 2012 and not only charge sheet has been submitted, shortly the case is likely to be committed to the Court of Sessions.

39. Since grant of bail depends on facts and circumstances of each case, consequently, in the entirety of facts and circumstances of this case and considering the nature and gravity of offence, especially, the apprehension expressed by the State about the likelihood of the witnesses being influenced and evidence being tampered with, this Court is not inclined to release the petitioner on bail.

40. Application is dismissed.

41. Any observations made hereinabove for the purpose of dealing with the contentions of the parties shall not prejudice to the case of either party at any stage of the trial.

PRATIBHA RANI, J

NOVEMBER 19, 2012

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