

IN THE COURT OF SH. ANIL ANTIL, ASJ-04, PHC, NDD,
NEW DELHI

Bail application no. 1469/19
FIR no. 157/2019
PS: Kishan Garh
U/s: 302/120-B IPC
State Vs. Rahul Kumar Mishra

18.04.2020

This is an application U/s 439 Cr.P.C. moved on behalf of applicant/accused Rahul Kumar Mishra for grant of bail is taken up today through video conference facility on the application moved on behalf of the accused.

Vide order no. 4518- 4608/D&SJ/NDD/2020 dated 15.04.2020 of Ld. District & Sessions Judge, Patiala House Court, New Delhi District, New Delhi, the undersigned has been deputed for duty today in pursuance to the directions of Hon'ble High Court of Delhi vide order no. R-77/RG/DHC/2020 dated 15.04.2020 and in continuation of the previous office order nos.4243-4333/D&SJ/NDD/2020 dated 01.04.2020, 4407-4426/D&SJ/NDD/2020 dated 10.04.2020 to combat the pandemic of COVID 19.

Present Sh. S.K. Kain, learned Addl. PP for State with IO.

Sh. Simon Benjamin, learned counsel for the applicant / accused Rahul Kumar Mishra.

Reply to the bail application has already filed.



Handwritten signature and date: (8/4/20)

Main arguments had already been advanced before the National Lockdown and the application was reserved for clarifications/orders. Today learned counsel has advanced additional submissions on his both applications and has also prayed for interim bail to the applicant/accused.

I. It is argued by learned counsel for the applicant / accused that he has been falsely implicated, he has nothing to do with the allegations as levelled in the FIR ; prosecution is not having an iota of evidence against the applicant ; and nothing incriminating has come on record qua the accused during the investigation ; and even the witnesses of the prosecution i.e. Mr. Suresh Kumar, father in law, Ms. Asha Devi, mother in law and Ms. Raboti Behra domestic helper in their respective statements have given clean chit as they stated in favour of the accused.

It is argued by learned counsel for the applicant/accused that he is an educated person ; belongs to a respectable family ; permanent resident of Delhi ; not involved in any other case crime ; is in J.C since 05.05.2019 ; the investigation of the case till date has not ascribed any role to the applicant in the case crime. That at the time of death of his wife/deceased was at his work place ; was performing his official duties and has been falsely roped by the investigating agency later on.

Learned counsel further argued that charge sheet has already been filed ; there is no justifiable apprehension to the prosecution that applicant can tamper the evidence or influence its witnesses ; no recovery has to be effected from his possession, charge has not been framed, trial will take sufficient time as more than 45 witnesses have been cited.



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It is further stated that the case of the prosecution is not supported by the FSL result whereby no poisonous substance was detected in the viscera of the deceased on its examination.

It was further argued that it is a well settled principle of law that in case of delay in trial, bail should not be denied to an under trial only due to the severity of the offence.

It is further submitted that investigation qua him is complete and no purpose would be served by keeping him behind the bars.

Learned counsel for the applicant/accused has relied upon the judgment of Prabhakar Tewari Vs. State of UP & Anr, Criminal Appeal no. 154 of 2020 arising out of SLP (Crl) No. 9209/2019 decided by the Hon'ble Supreme Court of India on 24.01.2020 and Dhruvkant Vimal Thakur Vs. The State of Maharashtra Criminal Bail application no. 3241 of 2018 of Hon'ble High Court of Bombay decided on 06.03.2019, amongst number of other judgments.

II. Learned Addl. PP for the State has vehemently opposed the bail application and submitted that applicant/accused in connivance with his co-accused has given the colour to the offence of the present case. It is further submitted that he was not happy with the marriage performed with the deceased Pooja and wanted to marry with his school friend/co-accused Padma Tiwari who had studied with him in De Nobili School in Sindri.

Learned Addl. PP further submitted that before the death of victim Pooja a letter was written in the hand writing of co-accused Padma Tiwari on the dictates of applicant/accused and as per the FSL report of the analyst it was opined that



some similarities were found in the general features such as writing movement, skill, speed, spacing, alignment relative size and proportion of characters and nature of commencing & terminating strokes etc.

Learned Addl. PP further submitted that the mobile phone of applicant/accused, co-accused Padma has already been sent to FSL for analyzing the same but it has not been received till date and there is possibility of filing of supplementary charge sheet and it will take some time, priorities letter has already been sent in this regard and after it trial will commence by framing the respective charges against the accused persons.

It is further submitted that both the accused persons through a well hatched conspiracy had committed the murder of deceased (Pooja, wife of the applicant/accused) by administering poisonous/ stupefying substance in her drink.

It is stated that negative report of the FSL qua the poisonous substance may be because of the delay in taking the samples of the deceased and its examination, and that by itself, does not absolve the accused persons from the offence when there is ample evidence on record whereby the maid who was present at the time when co accused Padma Tiwari visited the house of the deceased and immediately thereafter the deceased was found murdered has narrated about it to the IO in her statement.

It is further submitted that even otherwise as per the subsequent opinion of the doctor, the death may have occurred due to smothering by the pillow in the present case and that injuries on the head of the deceased in the postmortem report was also detected.


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By summing up his arguments learned Addl. PP for the State submits that there are grave allegations against the applicant and he may not be enlarged on bail ; and also that accused is the mastermind of the case crime and there is apprehension that he can tamper with the evidence if enlarged on bail at the stage of this case.

Heard and record perused.

III At the outset it is stated that there is no dispute to the authorities relied upon by the learned counsel for applicant /accused. Suffice to state that the basic governing principles remains the same, each case has to be decided based on its own peculiar facts and circumstances. It must also be mentioned that the gravity of the offence and severity of the allegations and likelihood of accused tampering with the evidence and influencing the witnesses are exceptions itself carved out by the authorities relied upon by the applicant, which are aptly applicable to the facts of the case.

From the material placed on record by the prosecution in the form of ocular and as well the documentary evidence whereby the doctor has opined that smothering in the present case is possible by a pillow being used for the case crime, and the CDRs of the mobile phones of both the accused persons whereby it was reflected that they were in continuous touch with each other which got snapped immediately after the crime was committed, the prima facie involvement of the applicant/accused in the case crime can not be ruled out.

In addition to that even before committing the offence the applicant with the accused Padma Tiwari has tried to create circumstances and false evidence to maline the



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image of the deceased and to show that she was involved in extra marital relations with her colleagues, therefore, there are highly chances that the accused if enlarged on bail shall tamper with the evidence or influence the prosecution witnesses.

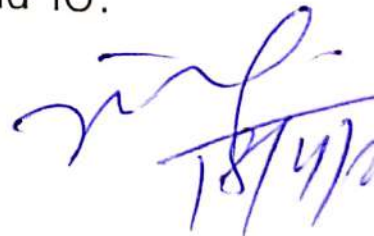
Thus in the totality of the facts and circumstances of the case, taking note of the severity of the accusations, nature of the offence and the conduct of the accused, I am not inclined to enlarge the accused Rahul Kumar Mishra on regular bail in the present case at this stage of the case.

IV Further during the proceedings conducted today through CISCO WEBEASE facility, learned counsel for the applicant has also alternatively prayed for grant of interim bail to the applicant due to outbreak of Covid-19 Pandemic as he has to look after his aged parents who are stationed in Delhi. Suffice to say that no urgency or exceptional circumstances are cited, nor any document is placed on record to substantiate the grounds of interim bail, nor the case of the applicant falls under the advisory guide lines issued by the Hon'ble Supreme Court and the Hon'ble High Court due to outbreak of Covid-19 Pandemic warranting me to exercise discretion in favour of applicant/accused to grant him interim bail.

Accordingly, bail application of applicant/accused Rahul Mishra is dismissed.

Application is disposed off accordingly.

Incharge, computer room is directed to sent the copy of the order through electronic mode to the learned counsel for the applicant/accused. Addl. PP for State and IO.



The order shall also be uploaded on the official website immediately.



(Anil Antil)

Register Judge
ASJ 04/NDD/PHC/ND
18.04.2020.