

State vs. Raj Kumar @ Bhola & Ors.

CNR No.: DLCT01-013816-2022

SC No. 644/2022

FIR No. 208/2022

Under Section 302/307/120B/34 IPC & 25/27 Arms Act

PS I.P. Estate

08.12.2022

Present : Mr. Amit Dabas, Ld. Addl. PP for the State.
Mr. Javed Ashraf Khan, Advocate for the accused,
namely, Samreen.
Ms. Geeta, Advocate with the complainant.
The accused persons are not produced from JC.

Vide separate order, application under Section 439 Cr.P.C. for regular bail *qua* the accused, namely, Samreen is dismissed. Issue notice to IO to submit reply to application under Section 173 (8) Cr.P.C. filed by the complainant. To come up for arguments on charge on **16.12.2022**. Issue notice to concerned Jail Superintendent to produce the accused persons before this Court physically.

Sanjay Sharma-II
ASJ-03, Central District
Tis Hazari Courts, Delhi
08.12.2022

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ORDER

1. This is an application under Section 439 of '*The Code of Criminal Procedure, 1973*' (*Hereinafter referred to as 'Cr.P.C.'*) for seeking regular bail in respect of the accused, namely, Samreen (*Hereinafter referred to as 'the applicant'*).

2. Ld. Counsel for the applicant contended that the applicant is in judicial custody since 14.06.2022. He contended that there is no material that the applicant conspired with the co-accused, namely, Raj Kumar @ Bhola to commit murder of the deceased, namely, Farman and injury to the complainant, namely, Idrish. He contended that the applicant is wife of the co-accused, namely, Raj Kumar @ Bhola and CCTV footage pertaining to their visit to Haldiram Restaurant, Janpath on 12.06.2022 as well as Call Detail Record (CDR) pertaining to their conversation are not incriminating material. He contended that there is no witness that the applicant instigated the co-accused, namely, Raj Kumar @ Bhola to commit murder of the deceased, namely, Farman. He contended that the applicant was implicated as her sister, namely, Aliya filed a complaint against the deceased.

3. Ld. Addl. PP for the State contended that 1st application under Section 439 Cr.P.C. for regular bail was dismissed on 18.07.2022. He contended that the Court of Session had taken note of entire incriminating material and contentions of the applicant while dismissing the said application. He contended that there is no change in circumstance warranting any indulgence by this Court. He contended that there is substantial incriminating material against the applicant and she is not entitled to bail.

4. Besides filing of charge-sheet, there is no other change in circumstance. Filing of charge-sheet does not entitle the applicant to bail.

5. Filing of a charge-sheet is not a circumstance favorable to the applicant. Instead, it is a circumstance against the applicant that investigating agency has found a case worth trial against him.

6. In *Virupakshappa Gouda & Anr. vs. State of Karnataka & Anr.*, (2017) 5 SCC 406, Hon'ble Supreme Court of India held as under:

“12. On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the factum that when a charge-sheet is filed it amounts to change of circumstance. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the charge-sheet for trial of the accused persons.....”

7. The contentions raised by Ld. Counsel for the applicant were noted and rejected while dismissing an application under Section 439 Cr.P.C. on 18.07.2022, as under:

“I have considered the rival contentions. At the very Outset I may observe that as per the allegations the deceased Farman was married to one Aliya (***sister of the present applicant / accused Samreen***) and had filed complaint against Farman with CAW Cell and it was the applicant / accused Samreen who used to provoke her husband Raj Kumar @ Bhola to **teach a lesson to the family of Farman**. Further, as per the allegations the applicant / accused Samreen also **used to provoke her husband Raj Kumar to kill Farman since he used to taunt Samreen of having conducted an inter-religion marriage**. On the date of accident i.e. on 12.06.2022 the applicant / accused **Samreen** was standing outside the gate of her house and was **provoking / exhorting Raj Kumar** to kill Idrish and his son Farman by stating “.....***Bhola aaj dono baap beto ka kaam tamam karna hai, mai dono bap beto ke taano so tang aa gai hu aur aaj dono baap-bete bachne nahi chahiye.....***”.

Secondly, the applicant / accused Samreen had hatched a conspiracy to kill Farman and Idreesh with her husband Raj Kumar at Haldiram Restaurant, 70 Janpath Hotel and the CCTV Footage from concerned Hotel has been collected in this respect which shows that they had stayed at the above hotel for about an hour.

Thirdly, the entire incident has been captured in a CCTV camera and on seeing the CCTV Footage it was revealed that six persons reached the spot of incident and the co-accused Raj Kumar and Mustkeen stabbed deceased Farman to death and the co-accused Raj Kumar had also attempted to murder the complainant Idrish after which all the accused fled away from the spot.

Fourthly, the Investigating Officer has informed that during investigations voice recording have been retrieved from the mobile phone of the co-accused Raj Kumar (main accused) the husband of present applicant / accused Samreen, showing that it was the applicant / accused **Samreen** who had instigated Raj Kumar to take revenge from Idrish and Farman for taunting her, which electronic data is under examination (*Note: Transcripts of the audio recordings present on investigation file have been duly perused*).

Fifthly, the investigations so far reveals that the present applicant / accused had also lodged a complaint against Idrish and Farman regarding taunting and other issues. Further, several complaint have also been filed at Police Station I.P. Estate by both the parties against each other.

Sixthly, the weapons of offence i.e. Knives have been recovered at the instance of co-accused Raj Kumar (husband of the applicant / accused Samreen) and Mustkeen.

Lastly, the investigations are still at the initial stage and two co-accused Sabir and Salman who are absconding, are yet to be arrested.”

8. Accordingly, the application under Section 439 Cr.P.C. for seeking regular bail in respect of the applicant, namely, Samreen is dismissed.

9. A copy of order be given to Ld. Counsel for the applicant. A copy of order be sent to the concerned Jail Superintendent with the direction to handover copy of order to the applicant.

Sanjay Sharma-II
ASJ-03, Central District
Tis Hazari Courts, Delhi
08.12.2022