

SC ID no. 149/20
IA No. 01/2020
State Vs. Rajbir
FIR No. 304/2019
P.S. Jyoti Nagar
U/s. 302/34 IPC

05.12.2020

Present : Sh. Rakesh Mehta, Ld. Addl. PP for the State.

Sh. Brijesh Kumar, Ld. Counsel for applicant/accused.

IO/Inspector Pankaj Kumar in person.

This is an application for grant of bail u/s. 439 Cr.P.C as filed on behalf of above named applicant/accused during Covid-19 Pandemic.

Ld. Counsel for applicant/accused argued that applicant is in JC since 05.09.2019 and has been falsely implicated in the present case. It has been submitted that applicant was not present at the spot and he has been roped in the present case by his brother Mahender with whom he was having property dispute. Ld. Counsel for applicant further argued that as per statement of Mahender on the day of incident at about 12 noon, he saw that his brother Rajbir and his son 'H' (name withheld being CCL) were coming from the house hurriedly and when he entered into the house, he saw that his mother was lying on the Cot and there was no movement but first information regarding incident was given to the police at about 3.20 pm, which was recorded vide DD No.34-A by Sanjay- another brother of the applicant. Ld.

Counsel for applicant vehemently contended that as per Mahender, who allegedly saw the applicant alongwith his son coming hurriedly from the house, he had gone to Rahul Garden for his work but why he returned at about 12 noon from his work is unexplained. It is further submitted that applicant is sole bread earner of his family.

Per contra, bail application is opposed by Ld. Addl. PP for the State while arguing that deceased is mother of the applicant as well as of the informant namely Mahender. It is submitted that deceased had claimed maintenance from his sons but later on she withdrew claim of maintenance from other three sons but only pressed for maintenance from applicant and also the electricity and water connections of the portion of the house, where applicant was residing, were got disconnected and as such, applicant was having grudge against his mother. Ld. Addl. PP for the State further argued that deceased tried to resist and in this process CCL 'H' also received some bruises and abrasion and my attention in this regard is drawn towards the MLC of CCL 'H'. Ld. Addl. PP for the State further argued that as per postmortem report, the cause of death of the deceased is asphyxia as a result of manual strangulation. It is further submitted that applicant did not attend the cremation of his mother and later on he was arrested.

In brief, as per FIR, after receiving DD No.34-A, SI Dinesh Kumar alongwith Ct. Bobby reached at the spot, where a crowd was already gathered. They saw that one old lady of age about 70 years was lying on a Cot and one red colour strangulation mark was visible

on her neck. They checked the pulse but same was not there. At the spot Mahender -son of victim told SI Dinesh Kumar that at about 12 noon, when he returned to his house, he saw that his mother was lying unconscious and he has suspicion that his mother has been killed by someone. Some broken pieces of bangles were also lying near the Cot and thereafter, he called the senior officers at the spot.

The case set up by prosecution is that applicant alongwith his three brother and mother was residing at H.No.E-7, Gali No.1 East Gokul Pur, Delhi. There was dispute among brothers and mother regarding property. Deceased had also filed one case of maintenance, for which applicant had to give her Rs.1,500/- per month. His mother also got disconnected the electricity of the room of the applicant and used to abuse them. On 04.09.2019 when his other brothers were not present there, he alongwith his son i.e CCL 'H' caught hold the feet of his mother while CCL 'H' covered the face of his grandmother with Towel and thereafter, started pressing her neck and after sometime she collapsed.

Hon'ble Supreme Court in **Chaman Lal vs. State of U.P (2004) 7 SCC 525** held that “ It is a well settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court

in support of the charge”.

Perusal of charge-sheet shows that during investigation Mahender and Sanjay- both brothers of applicant have stated that after Mahender saw his brother Rajbir and CCL 'H' coming out of the house hurriedly and inside the room his mother was lying dead, he called other family members and relatives and after consulting with the family members information was given to the police thus, the reason explained by the prosecution witnesses is that as applicant is also son of the deceased at first instance all the family members consulted with each other and thereafter, informed the police. Brother in-law of the applicant namely Raju has also stated that on the day of incident he was called by Mahender at about 12.30 pm and thereafter, they called all the family members and relatives and later on informed the police. A perusal of postmortem report of the deceased also shows that seven reddish abrasion/bruises were found near the neck of the deceased which were antemortem external injuries. MLC of CCL 'H', who alongwith applicant allegedly pressed the neck of the deceased also shows multiple linear abrasion over chest and front of neck as also on face near nose and thyroid, which prima facie shows that deceased tried to save herself and in this process CCL 'H', who is son of the applicant sustained injuries. Broken bangles of deceased lying at the spot also indicate that deceased tried her best to save her life but could not succeed.

On being asked IO submits that he has also made Ahlmad of Family Court as a witness to produce judicial file to shows that

deceased had withdrawn her claim of maintenance from other three brothers and was only pressing for maintenance from applicant. Allegations against applicant are grave and serious in nature.

Keeping in view the totality of facts and circumstances of the case, at this stage, I am not inclined to grant bail to the applicant/accused. Application accordingly stands dismissed.

(Sanjeev Kumar Malhotra)
ASJ-04/Shahdara
KKD Courts/Delhi/05.12.2020