

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

Date of decision: 21st October, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 1683/2021**

NIDHU @ SHEELA

..... Petitioner

Through: Mr. F. K. Jha, Advocate

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Chadha, APP for the State
with Insp. Gursewak Singh and
SHO/Insp. Arvind Kumar, PS
Khayala.

+ **BAIL APPLN. 1684/2021**

SANJAY KUMAR SAHU

..... Petitioner

Through: Mr. F. K. Jha, Advocate

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Chadha, APP for the State.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioners have filed the instant petitions under Section 439 Cr.P.C seeking bail in FIR No.313/2016 dated 21.07.2016, registered at Police Station Khyala for offences under Section 302 IPC.

2. Facts, in brief, leading to the present petition are as under –:

- a) The instant FIR was lodged on the statement of Head Constable Mahavir (No.1143/W). It is stated that on 21.07.2016 at about

6:00 PM a person namely, Sanjay Thakur (hereinafter referred to as 'the victim/deceased') was brought to Guru Govind Singh Hospital, Raghubir Nagar, Delhi, in a severely injured condition on an e-Rickshaw by the petitioners herein. The injured victim was admitted in the emergency ward and was declared brought dead. It is stated that on questioning, the petitioners told the Head Constable Mahavir that they found the deceased in an injured state near Sunil Dairy and that they brought him to the hospital for the sake of humanity. It is stated that the clothes of the petitioners were soaked in blood. The victim was declared as brought dead. It is stated that when Head Constable Mahavir arrived at the emergency ward, he could not find the petitioners there. It is stated that while searching for the petitioners herein, when Head Constable Mahavir came out of the ward, he saw that the petitioners were at the main gate of the hospital and the e-Rickshaw in which they had brought the deceased was also not present there. Police was informed. On receiving the information Police reached the spot and the statement of the Head Constable Mahavir was recorded. On the basis of the said statement FIR No.313/2016 dated 21.07.2016, was registered at Police Station Khyala for offences under Section 302 IPC.

- b) Investigation revealed that Nidhu Devi (petitioner in BAIL APPLN. 1683/2021) is the wife of the deceased. Investigation further revealed that the petitioners were residing at House No. N-153, Gali No.3, Vishnu Garden, Delhi. It was also revealed that Nidhu Devi had gone to the village and brought the

deceased to Delhi on the pretext of getting him a job. It was revealed that the petitioners and the deceased were living in the same room at House No. N-153, Gali No.3, Vishnu Garden, Delhi.

- c) The MLC of the deceased records the following injuries:
 - a) Abrasions over parietal region.
 - b) swelling on the parietal and temporal region of the scalp.
 - c) bruising over both the eyes.
 - d) CLW approx 2cm x 1cm over left eyelid.
 - e) bruise over nose and upper lip.
 - f) incised wound approx 7cm x 1cm over front of the neck.
 - g) dried blood on nostrils and mouth.

Injury No.7 in the Post Mortem report, which has been inflicted by a knife reads as under:

"One incised wound of size 5cm x 2cm x cartilage deep present on the anterior aspect of neck with exposing neck muscles and cricoid cartilage. Surface of the wound covered by clotted blood and reddish in colour. On exploration the underlying muscles and fascia i.e. cricothyroid fascia cut with full thickness and cricoid cartilage cut partly....."

- d) The petitioners were arrested on 21.07.2016. Charge-sheet has been filed. Trial has commenced.
- e) Charges have been framed against the petitioners for offences under Sections 302/201/34 IPC.

- f) The last of the bail application, filed by the petitioners, was dismissed by the learned Additional Sessions Judge-04, Tis Hazari Courts on 07.05.2021.
- g) Thereafter, the petitioners have approached this Court by filing the instant petition.

3. The learned counsel for the petitioners contends that the petitioners have been in custody since 21.07.2016. He states that out of 23 witnesses, 19 witnesses have been examined. He further states that the entire case of the prosecution is based on circumstantial evidence. He contends that the petitioners were released on interim bail under the HPC Guidelines and the interim bail was extended. The Supreme Court by an order dated 19.03.2021 in Special Leave to Appeal (C) No.13021/12020 titled as National Forum on Prison Reforms v. Government of NCT of Delhi & Ors., directed the under trials to surrender. He states that both the petitioners surrendered in April 2021. It is stated that they have not abused the interim bail granted to them. He further contends that even if the facts of the prosecution are admitted in its entirety then also, at best, only a case under Section 304 Part II IPC is made out against the petitioners and since the petitioners have already been in custody for more than six years now, the petitioners ought to be released on bail.

4. *Per contra*, Mr. Amit Chadha, learned APP for the State, vehemently opposes the bail by contending that Nidhu Devi (petitioner in BAIL APPLN. 1683/2021) was already married. She had an extra marital affair with the petitioner in BAIL APPLN. 1684/2021. He states that both the petitioners were living together at D-147/147, DDA Colony, Khyala, Delhi and later they shifted to House No. N-153, Gali No.3, Vishnu Garden, Delhi. He

states that only with the motive of eliminating the deceased, Nidhu Devi (the petitioner in BAIL APPLN. 1683/2021) went to his native village and brought the deceased to her house and then both the petitioners eliminated him. The learned APP for the State submits that PW-3 has stated that both the petitioners were living on the third floor of his house and the deceased started living in the same home after some time. He states that PW-3 has categorically stated that on 21.07.2016, he heard some noise and when he went to the room of the petitioners, he saw Nidhu Devi was cleaning the floor, which had blood on it, and Sanjay Kumar Sahu was standing there and the victim was lying on the floor and was breathing heavily. He further stated that he called an e-rickshaw and sent the victim and the petitioners to the Hospital in the e-rickshaw.

5. Heard Mr. F. K. Jha, learned counsel for the petitioners and Mr. Amit Chadha, learned APP for the State and perused the material on record.

6. The petitioners are accused of an offence punishable under Section 302 IPC. The deceased was the husband of Nidhu Devi (petitioner in BAIL APPLN. 1683/2021). The deceased and the petitioners were living in the same house. The petitioners brought the body of the deceased to the hospital. They have been identified by the Head Constable Mahavir.

7. A perusal of the deposition of PW-1, Sunil Kumar Thakur, who is the brother of the deceased, shows that the deceased and Nidhu Devi (petitioner in BAIL APPLN. 1683/2021) got married in 1999 and they have two children. He stated that about 6-7 months prior to the incident, Nidhu Devi had gone to her parental house from where she ran away. It is stated that after 2-3 months, Nidhu Devi returned to her parental house and said that she was working at some factory in Delhi during her absence from her

parental house. He further stated that about 10-15 days prior to the incident, Nidhu Devi went to his native village and brought the deceased with her on the pretext of getting him employment in Delhi. He further stated that Nidhu Devi told them that once they get settled they will also bring their children to Delhi. He stated that in the evening of 21.07.2016, information was received that his brother has been murdered. He stated that he came to Delhi and identified the dead body of his brother in the mortuary of DDU hospital.

8. PW-3, Laxman Singh, is the land lord of the house where the petitioners and the deceased were staying. In his statement, he stated that his house is situated in a three floor building and he resides on the ground floor with his family. He stated that on the first floor of the building there are three rooms in which tenants reside. He further stated that on the second floor there are three rooms which are also let out. He stated that on the roof of second floor there are two rooms having tin roofs. He stated that the petitioners and the deceased were living in one of the rooms on the third floor. He stated that on 21.07.2016, at about 4.30 PM, he heard a noise from the roof and when he went there he saw Nidhu Devi was washing the floor of the room. He stated that Nidhu Devi was washing the blood lying on the floor with water. It is stated that when he enquired, he was informed that a quarrel took place between the petitioners and the deceased. He stated that the deceased was lying on the floor and he was heavily breathing. He stated that he immediately called a battery rickshaw which was passing from the street and sent the petitioners and the deceased to the hospital for treatment of the deceased. He stated that he later on came to know that the deceased had passed away.

9. The prosecution also examined PW-4, Mohan Shyam, who was the erstwhile land lord of the petitioner. He also identified the petitioners and stated that they were staying at his house as tenants. He stated that the petitioners lived in his house for about 3-4 months and then they vacated the premises. In the Cross-examination, he stated that Sanjay Kumar Sahu (petitioner in BAIL APPLN. 1684/2021) first approached him for taking the premises on rent and started residing there and after 3-4 days Nidhu Devi (petitioner in BAIL APPLN. 1683/2021) joined him and both of them started living together.

10. The factors which have to be kept in mind while considering an application for bail are:

- a. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- b. nature and gravity of the accusation;
- c. severity of the punishment in the event of conviction;
- d. danger of the accused absconding or fleeing, if released on bail;
- e. character, behaviour, means, position and standing of the accused;
- f. likelihood of the offence being repeated;
- g. reasonable apprehension of the witnesses being influenced; and
- h. danger, of course, of justice being thwarted by grant of bail.

11. Even though most of the prosecution witnesses have been examined but the petitioners are accused of a very serious offence. Though at the stage of bail, the Court need not conduct a mini trial but the heinousness of the offence is one of the important and relevant factors while considering as to whether bail should be granted or not. The material on record reveals that Nidhu Devi (petitioner in BAIL APPLN.1683/2021), who was already married to the deceased was living with Sanjay Kumar Sahu (petitioner in BAIL APPLN.1684/2021) and they were residing at D-147/147, DDA Colony, Khyala, Delhi and later they moved to House No.N-153, Gali NO.8, Vishnu Garden, New Delhi. Nidhu Devi went back to the native village of the deceased and brought him with her on the pretext of employment and then the incident took place on the fateful day. Looking at the gravity of the offence, the nature of injuries, the manner in which the incident took place and the fact that the petitioners do not reside in Delhi and the chances of their absconding are high, this Court is not inclined to grant bail to the petitioners at this juncture.

12. Accordingly, the bail applications are dismissed along with the pending application(s), if any.

13. The Trial Court is directed to expedite the trial and conclude the same within a period of eight months.

14. It is made clear that the observations made in this order are not on the merits of the case.

SUBRAMONIUM PRASAD, J

OCTOBER 21, 2021

Rahul