

Padma Tiwari vs State on 1 April, 2025

*	IN THE HIGH COURT OF DELHI AT NEW DELHI	
%		Reserved on: 27.03.2025 Pronounced on: 01.04.2025
+	BAIL APPLN. 1002/2024 PADMA TIWARIPetitioner
	Through:	Mr. Ankit Aggarwal, Adv.
	versus	
	STATERespondent
	Through:	Ms. Meenakshi Dahiya, APP with Insp. Sanjay Kumar and Insp. Rajeev, PS Kishan Garh Mr. Sharad Malhotra, Adv. for complainant.
	CORAM:	
	HON'BLE MS. JUSTICE SHALINDER KAUR	
	JUDGMENT	

1. The present application, under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.), has been filed by the petitioner seeking Regular Bail during the pendency of trial in connection with FIR No. 157/2019 (subject FIR), dated 30.04.2019, registered under Sections 302/34 of the Indian Penal Code, 1860 (IPC), at Police Station Kishan Garh, Delhi.

PROSECUTION'S CASE

2. On 16.03.2019, during the Night Emergency Duty, a PCR call was received, recorded as DD No. 31A, informing about the death of one Ms. Pooja Rai (deceased), who had been brought dead to the Fortis Hospital. In response, Assistant Sub-Inspector (ASI) Ajeet, accompanied by the Constable Santosh, reached the Fortis Hospital, where the deceased, Pooja Rai, wife of the co-accused Rahul Kumar Mishra, a resident of 106-B, Kishangarh, Vasant Kunj, New Delhi, was declared dead by the attending doctor, as per the MLC No. 6246/2019. The medical opinion indicated that she was brought in an unconscious and comatose state.

3. Upon a preliminary inquiry, the co-accused person, Rahul Kumar Mishra, stated that his marriage with the deceased was solemnized on 23.04.2017. He further stated that on 16.03.2019, at approximately 06:45 PM, upon returning home from work, he found the main door of the house to be open and found the deceased to be lying unconscious inside. Thereafter, he called for assistance from his cousin, Vinay, who resided in the same locality. The deceased was, then, immediately taken to the Fortis Hospital, where she was declared dead by the attending medical officer. The co-accused Rahul Kumar Mishra, subsequently, handed over two handwritten notes written in pink ink to ASI Ajeet, stating that he had found the said notes lying near the body of the deceased on a bedsheet on the floor in the hall. These notes were taken into possession by the ASI Ajeet as part of the investigation.

4. Given that the death of the deceased occurred within seven years of marriage, the Executive

Magistrate, Mehrauli, was duly informed, and proceedings under Section 176 Cr.P.C. were initiated. Consequently, ASI Ajeet, accompanied by Constable Santosh and the co-accused/Rahul Kumar Mishra, proceeded to the co-accused's residence, that is, 106-B, Kishangarh, Vasant Kunj, New Delhi. The crime scene was inspected and photographs were taken for further investigation.

5. In the morning of 17.03.2019, the body of the deceased was preserved for 24 hours, and the vomit-stained coverlet as well as the pillow were seized vide seizure memo. Thereafter, the Executive Magistrate, Shri Alok Kumar Mishra, arrived at the hospital and conducted an inquiry with the parents of the deceased and recorded the statement of her father. The father of the deceased categorically stated that he has a suspicion of the deceased being murdered.

6. The postmortem of the deceased was conducted by a Medical Board, vide PM No. 693/19, on 18.04.2019. The dead body was subsequently handed over to the deceased's father, Suresh Kumar, while the Viscera was preserved for further examination.

7. The Board of Doctors submitted their findings through a Postmortem Report dated 27.04.2019, wherein the Autopsy Surgeon recorded the cause of death as 'homicidal, due to multiple ante-mortem blows to the head, leading to a fatal head injury and asphyxia caused by smothering'. The estimated time of death was determined to be after 03:20 p.m. Furthermore, the chemical, Thin Layer Chromatography (TLC), and Gas Chromatography-Mass Spectrometry (GC-MS) examinations did not detect the presence of metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers, or pesticides in the exhibits.

Based on an analysis of the crime scene, witness statements, and the Postmortem Report, a case under Section 302 IPC was made out, leading to the registration of FIR No. 157/2019 on 30.04.2019.

8. The prosecution alleged that during the course of the investigation, it was revealed that one Ms. Padma Tiwari (petitioner) had visited the deceased prior to her death. Upon further inquiry, in her statement dated 01.05.2019, the petitioner disclosed that she and the co-accused, Rahul Kumar Mishra (husband of the deceased), had known each other since their schooling at De Nobili School, Sindri, Dhanbad, Jharkhand. They had remained in contact through a WhatsApp group in Delhi in 2015, leading to a relationship. Despite their intentions to marry, their families opposed the union due to caste differences. Consequently, co-accused Rahul Kumar Mishra married the deceased, Pooja Rai, on 24.03.2017. However, the petitioner and the accused continued their communication and resumed their relationship post-marriage.

9. The prosecution further alleged that in investigation it was revealed that on 14.01.2019, at the petitioner's rented accommodation in Mayur Vihar, the co-accused and the petitioner conspired to murder Pooja Rai using Potassium Cyanide, planning to mix it with in her juice. The prosecution also alleged that the petitioner and the co-accused in order to mislead the authorities, they jointly drafted a three- and-a-half-page letter, intending to leave it near the body of the deceased as a suicide note prepared by her. The Potassium Cyanide was procured from one Jayesh, through his firm namely Radhe Krishna Enterprises and was contacted via India MART. The petitioner further

confessed that she personally visited the deceased's residence, mixed the cyanide with juice purchased from a local shop, and served it to the deceased. As a result, the deceased lost consciousness and began vomiting, the petitioner foiled any attempt by the deceased to leave the flat as she forcefully restrained her, slammed her head against the floor, and ultimately smothered her with a pillow, causing her death. Following the execution of their conspiracy, the petitioner informed the co-accused Rahul Kumar Mishra of the act via phone on 16.03.2019.

10. As per the prosecution's case, statements of various witnesses were recorded during the investigation, which were incriminating evidence against the petitioner. Accordingly, the petitioner was arrested on 01.05.2019. The Chargesheet was filed on 18.07.2019, followed by two supplementary Chargesheets dated 03.10.2019 and 31.10.2019, incorporating laboratory analysis results and statements of additional witnesses. Meanwhile, the Forensic Science Laboratory (FSL) report dated 15.10.2019 confirmed the handwriting analysis of the letter found near the deceased's body to be matching with that of the petitioner.

11. The petitioner preferred a bail application before the learned Trial Court, which was rejected vide order dated 17.05.2023. Aggrieved by the dismissal of the bail application, delay in trial and apprehending that the trial may not conclude in the near future, the petitioner has approached this Court, seeking grant of regular bail. SUBMISSIONS ON BEHALF OF THE PARTIES

12. Mr. Ankit Aggarwal, learned counsel for the petitioner, at the outset, he submitted that there is an unexplained delay of more than 40 days in registration of FIR, which is gravely fatal to the prosecution case. He further submitted that the case of the prosecution rests on circumstantial evidence and the chain of circumstances as alleged by the prosecution has completely broken, casting a doubt on the Prosecution's version.

13. Relying upon the Call Detail Record (CDR), he submitted that the claim of the prosecution that the petitioner was present at the place of incident is neither corroborated by the CDR location nor by the statements of witnesses recorded under Section 161 Cr.P.C.

14. It was contended that, as per the CDR report, the petitioner's location was recorded at Kishangarh at approximately 10:39 AM, at Chhatarpur Metro Station at approximately 02:30 PM, and at Mayur Vihar Phase 3 at approximately 03:10 PM. Thus, at the time of the death of the deceased, the petitioner was not near the place of the incident and was rather far away from the place of residence of the deceased. Furthermore, as per the CDR, after 02:00 PM, the petitioner was at her own residence, which contradicts the prosecution's claim that the petitioner was present at the place of occurrence at the relevant time.

15. He further submitted that one witness, a Domestic Help namely Deepa in her statement under Section 161 Cr.P.C., has stated that she saw the deceased removing washed dry clothes in her balcony at 03:00 PM, thereby confirming that the deceased was alive at that time, however, she is not made a witness in the present case by the prosecution. Additionally, the father of the deceased has stated in his deposition that he spoke to the deceased at around 01:30 PM for about an hour. Learned counsel contended that this evidence establishes that the deceased was alive till 03:00 PM,

and at no point in time was the petitioner involved in causing her death.

16. The learned counsel also contended that the prosecution has alleged that the petitioner administered potassium cyanide to the deceased. However, as per the Viscera report, 'the chemical, TLC & GC-MS examinations did not detect metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers, or pesticides in the exhibits'. He submitted that these contradictions cast serious doubts on the prosecution's case.

17. It was also contended that the petitioner has been languishing in custody since 01.05.2019, while the co-accused Rahul Kumar Mishra, the husband of the deceased and an alleged co-conspirator, has already been granted bail vide order dated 11.11.2020. The petitioner was granted interim bail by this Court under the HPC guidelines for a period of 90 days, leading to her release on 12.06.2021. However, subsequently the bail was extended from time to time and the petitioner complied with all the bail conditions. The petitioner surrendered on 07.04.2023.

18. The learned counsel also contended that the petitioner has clean antecedents, and the trial is unlikely to conclude in the near future, as the prosecution has cited 54 witnesses, out of which only 18 witnesses have been examined, with one witness partially examined. Thus, the petitioner is eligible to be enlarged on bail.

19. Opposing the bail application, learned Additional Public Prosecutor (APP) submitted that the petitioner was present at the place of incident at the time of the deceased's death. The deceased had allowed the petitioner entry into her residence, as she was acquainted with her, as a friend of her husband. The investigation revealed that the petitioner had mixed a poisonous substance into a glass of juice, which she had purchased from a shop and after making the deceased drink the juice, she took away the empty glasses with her, which is corroborated by the statements of prosecution witnesses.

20. It was further submitted that, apart from making the deceased consume the poisoned juice, the petitioner banged the deceased's head against the floor and smothered her with a pillow, leading to her death. The time of death is confirmed through the post mortem report. He submitted that the petitioner was last seen with the deceased for which he drew the attention of the Court to the statement of PW Raboti Bhera and submitted that she was last seen at the house of the deceased at about 11:00/11:30 AM, after she left the house finishing the household work. Additionally, it was contended that the letter, purportedly intended to depict the incident as a case of suicide, was placed by the petitioner near the deceased's body. The handwriting on the letter was reportedly found to match that of the petitioner, as per the FSL report dated 15.10.2019.

21. It was submitted by the learned APP that the petitioner had a motive to cause the deceased's death, as she intended to maintain her relationship with the co-accused Rahul. More so, the role of co-accused Rahul was distinct from that of the petitioner, as he was merely a conspirator, whereas the petitioner had single-handedly executed the murder of the deceased.

22. The learned APP contended that there has been no undue delay in conducting the trial, and that the petitioner has already remained on bail for a period of two years under the HPC guidelines. He, thus, prayed for dismissal of the bail application.

ANALYSIS AND CONCLUSION

23. Having heard the submissions on both the sides and perused the record, the prosecution has essentially rested its case on circumstantial evidence. It is alleged that the petitioner possessed a clear motive ascribed to her relationship with the co-accused Rahul, the husband of the deceased, to cause death of the deceased as they both were keen to carry on with their relationship and the deceased was a hindrance thereto.

24. It was also submitted that the petitioner had peacefully gained entry inside the house, being an acquaintance of deceased's husband and brought two glasses of juice with her, one of which was for the deceased and was already laced with a poisonous substance.

25. The learned APP strongly submitted that the Domestic Help had heard the petitioner insisting upon the deceased to drink the juice though the deceased was not inclined immediately to drink it, as she had taken tea. She had submitted that the juice glasses were not found at the crime scene, which fortifies the plea of the prosecution that the petitioner had an intention to kill the deceased. The learned APP had also submitted that the CDR further strengthens the case of the prosecution as the presence of the petitioner has been shown near the house of the deceased on the day of the incident, which has been corroborated by the prosecution witnesses.

26. On the other hand, the petitioner has highlighted that the prosecution version is conflicting and irreconcilable with respect to the last seen theory and the motive of the case as alleged by the prosecution.

27. Needless to say, the circumstances as put forth by the prosecution are being examined by the learned Trial Court and shall be evaluated upon conclusion of evidence. No doubt, the nature of offence and circumstances as alleged are serious, resulting in elimination of a human life, thus, there is severity of charges involved.

However, a long incarceration of the petitioner is also a significant factor while dealing with the bail application of the petitioner.

28. In all, the prosecution has cited 54 witnesses, out of which only 18 witnesses are stated to have been examined. The petitioner was arrested on 01.05.2019 and apart from the period of almost two years, when she was granted bail under the guidelines of HPC, she has been in custody. Her jail conduct is reported to be 'satisfactory' and no involvement in any other criminal case has been shown and she has clean antecedents. Moreover, nothing has been placed on record to show that the petitioner is likely to tamper with the evidence or influence the witnesses. Considering the background, it can also not be said that she is a flight risk.

29. In view of the above, considering the nature of allegations and petitioner's clean antecedents, coupled with the fact that the trial is underway, the present bail application is allowed and the petitioner, Padma Tiwari is admitted to regular bail pending trial in the subject FIR, on her furnishing a personal bond in the sum of Rs. 30,000/- with one surety bond of the like amount, subject to the satisfaction of the learned Trial Court / CMM / Duty Magistrate and further subject to the following conditions:

i. The Petitioner shall not leave India without prior permission of the Learned Trial Court.

ii. The Petitioner shall report at P.S. Kishangarh every Saturday at 4:00 P.M. The concerned officer shall release the Petitioner by 5:00 P.M. after recording her presence and after completion of all the necessary formalities. iii. The Petitioner shall immediately intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change of residential address. iv. The Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.

v. The Petitioner is directed to give her mobile number to the Investigating Officer and keep it operational at all times. vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

30. Needless to state, the observations made hereinabove shall not tantamount to be an expression on the merits of the case and have been made for the consideration of bail alone.

31. A copy of this Order be sent to the Jail Superintendent concerned for information and necessary compliance.

32. Accordingly, the petition is disposed of.

SHALINDER KAUR, J APRIL 01, 2025/ss/kp Click here to check corrigendum, if any