

CNR No. : DLNT01-006875-2021
SC No. : 436/2021
STATE Vs. SUSHIL KUMAR ETC
FIR No. : 218 /2021
PS : Crime Branch (Model Town), New Delhi
U/s: 302/307/308/364/365/452/323/342/188/
269/147/148/149/506(II)/392/394/397/411/
201/109/120B/34/174-A IPC
and U/s 25(1)(B) & 27(1)Arms Act, 1959.

04.11.2022

File taken up today as an application u/s 439 Cr.P.C. for grant of interim bail for three weeks has been moved on behalf of applicant/accused **Sushil Kumar**.

Present: Sh. Sanjay Jindal, ld. Addl. PP for the State.

Mr. Mohit Saroha, Mr. Vaibhav Karadale, Ms. Jasleen and Ms. Khushboo Tomar, ld. counsels for complainant.

Ms. Nikita Garg, ld. counsel for complainant/victim Amit.

Sh. Prateek Kirar, ld. Counsel for complainant Jai Bhagawan @ Sonu.

Mr. Shahrukh Ahmad, Mr. Mandeep Baisala and Mr. Vivek Kumar, father of deceased Sagar Dhankhad.

Sh. Sumeet Shokeen, Sh. Mahender Dahiya, Sh. Pawan Kumar and Ms. Ruchika Lakra, ld. counsels for the applicant/accused Sushil Kumar.

IO/ Inspector Mangesh Tyagi, ARSC/Crime Branch, Sharkarpur, Delhi is present.

Reply to the application has been filed.

It is submitted by ld. counsel that the present application is being filed on behalf of the applicant purely on medical and humanitarian ground. He has further submitted that wife of applicant namely Mrs. Savi is suffering from severe lower back pain since long

and at different intervals. He has further submitted that somewhere in the second week of August 2021, the wife of the applicant had acute Neck and Spinal pain and there was restricted neck movement and the doctor has advised certain medicines and exercises to the wife of the applicant. It is submitted by Id. counsel that in the third week of February, 2022 the wife of the applicant again had severe lower back ache and the doctor has advised certain medications and MRI of Dorsolumbar Spine (copy enclosed). It is further submitted by Id. counsel that the lower back pain of the wife of the applicant got so aggravated that she was not even able to move herself without support. It is further submitted that since there was no relief in the lower back pain of the wife of applicant, she visited to the Government Hospital in the month of February, 2022 for treatment and she was advised complete bed rest for four weeks. However, she could not complete her medical treatment as there was nobody in the family to take care of her and she was managing her daily chores under heavy intake of pain killers. Ld. counsel further submitted that in the second week of August, 2022, she again had acute lower back ache and she was not even able to walk properly. Thereafter, she again visited Government Hospital and she was advised to avoid front bending and she was further advised to plan for surgery after L4-L5-S1 Laminectomy and Discectomy. She again could not complete her medical treatment due to non-availability of close attendant who could take care of her and two minor children as the doctor had advised complete bed rest of at least 10 days would be required post-surgery. He has further submitted that wife of the applicant faced with a similar situation in the third week of September, 2022 and October, 2022 since the wife of the applicant was not getting required medical treatment and she was not able to perform her daily chores. It is

further submitted that her lower back pain started affecting the lower limbs as well and she was unable to walk properly without support. It is further submitted that the medical condition of the wife of the applicant became worse on 01.11.2022, as she slipped in the washroom and suffered a jerk in her spine due to which she is suffering from unbearable pain in lower back and hips region. He has further submitted that after that incident she was not even able to move herself due to acute lower back pain and there was complete numbness in the lower limbs. He has further submitted that she was immediately rushed to Acharya Shree Bhikshu Government Hospital, Govt. of NCT of Delhi, Moti Nagar, Delhi-110015 wherein medicines and pain killers were injected and was instructed to get admitted in the hospital on Saturday i.e. 05.11.2022 for L4-L5-S1 Laminectomy and she was advised complete bed rest for 4 days. The doctor informed her that after admission on Saturday i.e. 05.11.2022, the surgery has to be planned for Monday i.e. 07.11.2022.

Ld. counsel for the applicant /accused submitted post-surgery there is no one in the family to take care of her. The mother of the wife of the applicant is suffering from arthritis and body ache since long and is under medication. Hence, even the mother of the wife of the applicant is not in a position to take care of her daughter. Ld. counsel further submitted there is no woman in the house except her mother who can take care of her. He has further submitted that she needs a woman who can take care of her and change her clothes etc. after surgery as her brother cannot do that. It is only the husband who can give proper care and support during a medical emergency. He further submitted in the family of in-laws there is only the mother of the applicant and the brothers of the applicant are not staying at home. Ld. counsel further submitted that co-accused persons have also been

granted interim bail on different grounds. He has further submitted that investigation in the present case has already been completed and no prejudice would be caused to complainant in case the present application is allowed. He has also submitted that applicant/accused undertakes to surrender on time. Hence, he has prayed for grant of interim bail for two weeks on humanitarian grounds to facilitate the surgery and proper medical treatment of his wife and for taking care of her after surgery.

On the other hand, Ld. Addl. PP for the State has opposed the bail application on the ground that the offence is heinous in nature and associated with brutal murder of the complainant Sagar Dhankhad. It is further submitted that presently wife of the applicant Smt. Savi is residing with her parents and there are other members in her family to look after her. He has further submitted that he is the main accused and the case is at the crucial stage where material witnesses are yet to be examined. He has further submitted the regular bail application of the applicant/accused was dismissed by Hon'ble High Court of Delhi. He has further submitted this is a very highlighted case and there is every possibility of his influencing and threatening the witnesses. He has further submitted that he may jump the bail, if granted to him.

Ld. Counsel for the complainant submitted that in the present case the Hon'ble High Court of Delhi has also recognized threat perception to the victim and had ordered for appropriate security of the witnesses. It is further submitted by the counsel for the complainant that the High Court had also given the complainants liberty to move application for examination of witnesses being done through VC.

Per contra, it is argued by ld. counsel for the applicant

that before the Hon'ble High Court of Delhi one regular bail application was moved but the same was withdrawn hence, the same cannot be considered against the present applicant as only interim of bail application has been moved on recent urgency. With regard to the witness threat perception, it is submitted by the ld. counsel for the applicant/accused that except one victim all other victims had refused to take security.

Heard.

The present interim bail application has been filed on the ground of urgent need of operation of the wife of the applicant/accused. The medical documents annexed with the application have been got verified from the concerned hospital by the IO. Perusal of the medical report of the wife of the applicant reveals that she has been suffering from acute lower back pain since August, 2021. She had been continuously getting the treatment and her MIR dated 22.02.2022 mentioned her illness that:

".....Diffuse disc bulge with posterior annular tear, small posterocentral disc protrusion at L5-S1 level causing indentation over thecal sac, impingement over right traversing nerve root and mild encroachment over bilateral neural foramina. Posterocentral disc bulge at D9-10 level causing indentation over thecal sac with no significant neural compression....."

During her treatment she had been advised operation on 10 August, 2022 but the same could not be conducted. Similarly, on 19.09.2022, reference for surgery was also made by Acharya Shree Bhikshu Government Hospital, Moti Nagar, Delhi. The latest medical document of the wife of the applicant dated 01.11.2022 mentions that surgery is to be conducted on coming Monday i.e. 07.11.2022. The medical history of the applicant reveals that she has been suffering

from acute lower back pain and the same could not be got operated. The urgency of the present operation is stated to be due to slip in the washroom. The submission of ld. counsel that though there are other family members but her operation could not be conducted as her husband who is applicant/accused in this case was not there and other person did not take it seriously seems justified as first operation was prescribed on 10 August, 2022 yet she could not be operated and in the meantime her condition has deteriorated. It was also submitted during the arguments that the applicant/accused has two minor children aged about 8 years. The mother of the wife of the applicant/accused is also stated to be suffering from arthritis and her documents have also been verified from the concerned hospital. It is also not in denial that after surgery the wife of the applicant/accused will not be in position to follow normal daily routine and will be depended on others for few days. Therefore, keeping in view the medical condition of the wife of the applicant/accused and also considering the fact that there are two minor children, this Court is of the view that presence of the applicant/accused will be required, **he is ordered to be release on interim bail till 12.11.2022 on his furnishing personal bond in the sum of Rs. 1 Lakh with two sureties in the like amount. Applicant/accused is directed to surrender before the concerned Jail Superintendent after expiry of interim bail period i.e. on 13.11.2022. Keeping in view the threat perception of the witnesses and also considering the safety and security of the accused himself at least two security personnel shall be present with him round the clock to keep vigil over the applicant/accused. As deploying two security personnel would incur additional**

expenditure on the concerned authority, it is directed that amount of Rs.10,000/- per day will be borne by the applicant/accused for deployment of security persons/policemen for keeping surveillance over the activities of the applicant/accused and also for security of the applicant/accused. The amount of Rs.10,000/- (Ten Thousand) per day be deposited with the Jail Superintendent concerned in advance. He is further directed not to threaten the prosecution witnesses or tamper with evidence or indulge in any crime. The applicant/accused shall share his phone's live location as and when required by the IO. In case, it is prima facie brought to the notice of the Court that the applicant/accused is violating the said conditions, the interim bail granted to him shall be liable to be cancelled. The bail application is disposed of accordingly.

The same be tagged with the main file.

Copy of the order be sent to the concerned Jail Superintendent for information and compliance.

(Shivaji Anand)
Addl. Sessions Judge: 04 (North)
Rohini Courts: Delhi: 04.11.2022^(R)