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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19.06.2020

Pronounced on: 24.06.2020

+ BAIL APPLN. 1348/2020

PRAKASH JARWAL

..... Petitioner

Through Ms. Rebecca M. John, Sr. Adv. with
Mr. Ravi Drall, Ms. Megha Bahl and
Ms. Maulshree Pathak, Advs.

versus

STATE

..... Respondent

Through Mr. Hirein Sharma, APP for the State
with IO Kamlesh
Mr. Tanvir Ahmad, Adv. for
complainant.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The present petition has been filed under section 439 Cr.P.C. for seeking bail in pursuance to FIR No.213/2020 dated 18.04.2020 registered at Police Station Neb Sarai for the offences punishable under sections 386/506/306/34 IPC.

2. Petitioner is sitting MLA from Deoli Assembly Constituency of NCT of Delhi. He remained in police custody in above-mentioned case since 09.05.2020 to 16.05.2020 but the IO himself filed an application for

sending the Petitioner to JC and on 17.05.2020 the Petitioner was sent to JC as the investigation qua him had been completed.

3. Ms.Rebecca M. John, learned senior counsel appearing on behalf of the petitioner submitted that in the FIR itself, it has been mentioned by the complainant that wife of deceased gave one complaint to the Delhi Jal Board on 09.04.2020 as DD No.5378, just one week before the suicide, against the Petitioner but contrary to said fact in the said complaint, name of the Petitioner as well as name of co-accused persons has not been mentioned. Further no allegations of extortion or threat has been made by wife of deceased in the said complaint. Moreover, the deceased or his family members were plying water tanker since 2006 and it has been alleged that the deceased was giving money to the Petitioner since he became MLA first time but the deceased or his family members didn't give any complaint to any authorities including police in last 5-6 years.

4. Learned senior counsel further submitted that the alleged suicide note is fabricated and the same is in two different hand writing with different pens. The name of the Petitioner has been written with different pen which does not bear the signature of the deceased on the second portion of the suicide note. The alleged suicide letter is on public domain face book etc.

5. It is submitted that the deceased was running water tankers in DJB since 2007 and he was engaged in illegal activities of selling water of poor persons to Sanik Vihar Farm owners for Rs.1,500/- per tanker. There were various complaints against the deceased and his syndicate of selling water tankers upon which a sting operation was conducted by News Channel IBN in the month of June, 2015 in which the deceased along with his associates was caught on camera in a sting operation. After the said sting operation, name of deceased was blacklisted from DJB and his family members, therefore, they had grudges against petitioner and his known persons.

6. Learned senior counsel further submitted that the petitioner through his Advocate filed RTI before DJB on 24.04.2020, however, reply dated 24.04.2020 reveals that the competent authority DJB disengaged 9 water tankers which were running in the name of the deceased and his family members because he was caught red handed in the black marketing of the water tankers in a sting operation as mentioned above. In addition, since 2015 to 2020, no water tanker was running in the name of deceased. While instead of engaging the water tankers in his own name as he was blacklisted from DJB, deceased engaged 5 water tankers in the name of his wife and other relatives one of which namely Hamender was also seen in sting

operation.

7. Further submitted that no payment was ever stopped by the Petitioner, as is evident from RTI reply whereby the competent authority DJB has categorically mentioned that *"Payments are regularly made to vendors subject to the availability of funds"*. The Petitioner filed another RTI on 27.04.2020 through his counsel, however, in reply thereto, it appears that payments of deceased or his family members were never stopped and around Rs.62 lakhs paid in lieu of the tankers run by family members of the deceased from January 2019 to January 2020. To enquire about the fact as to why the water tankers of the deceased were not engaged by DJB in month of March 2020 and April 2020, the advocate on behalf of the Petitioner filed another RTI to which the DJB replied that no application was filed by deceased for engaging the tankers in DJB and further replied that there is no such record in DJB that the petitioner had any position in DJB to influence the engagement of water tankers.

8. Ms.Rebecca further submitted that the brother of the Petitioner namely Anil Jarwal was also implicated in the present case as his name was also mentioned in the suicide note but the Ld. Sessions Judge observing the different handwritings in the suicide note and no specific date of harassment

which forced the deceased to commit suicide, the co-accused was granted anticipatory bail vide order dated 02.06.2020.

9. Learned senior counsel has relied upon the judgment of Hon'ble Supreme Court in the case of ***Gangula Mohan Reddy vs. State of A.P.:*** ***2010(1) SCALE 1***, whereby observed as under:

“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

10. Learned senior counsel submitted that the Petitioner has also been alleged with committing offence under section 386 IPC. In the present case, the basic ingredients of the offence of the 386 IPC is not made out as no specific date, time and month has been mentioned by deceased or his family members as to when such alleged demand of money was made. She submits, one of the motives to implicate the Petitioner is that he was laying permanent water pipe lines which would have endangered the employment

of water tanker owners and this is the reason some other water tanker owners in nexus with family members of deceased gave statement against the petitioner. The Petitioner was allotted work for laying water pipelines and the work had to be completed till March 2020. The Petitioner is behind the bars and all the necessary work has been suspended due to his absence. Thus, petitioner deserves bail.

11. On the other hand, learned APP for State and learned counsel for the complainant, named above, while opposing the present petition submitted that on 18.04.2020, a PCR call vide DD No.11A was received at Police Station Neb Sarai that a person has committed suicide at H.No.A-144, Durga Vihar, New Delhi. On enquiry, it was revealed that Dr. Sh.Rajendra Singh, s/o Late Sh. Prahlad Singh, r/o H.No.A-144, 2nd floor, Durga Vihar, Devli, New Delhi, aged 52 years committed suicide by hanging himself with the help of rope attached to railing of the roof of his house in the early morning around 5:30 am. Later on, Crime team visited the spot and inspection of the spot was conducted. During enquiry, a suicide note containing 6 pages and a diary containing 39 written pages were also seized at the spot. During investigation, complainant Sh.Hemant Kumar (son of deceased) informed that total 5 water tankers of his father were engaged at

DJB, in the name of family members. They were not paying any money to anyone till the year 2015, but after 2015, when Prakash Jarwal was elected as a MLA in the area of Deoli, they were pressurized to pay Rs.15,000/- for the small water tankers and Rs.20,000/- for the big water tankers to Sh.Prakash Jarwal through his associates as an extortion money and protection money.

12. It was further alleged that all water tankers running in the constituency (Deoli, Khanpur, Sangam Vihar, Tigri) of MLA Prakash Jarwal were pressurized to pay extortion money to MLA Prakash Jarwal. The money was collected by his associate namely Kapil Nagar and Harish Jarwal and others. Further alleged that in the month of July 2019, petitioner Sh.Prakash Jarwal (Local MLA of Deoli Constituency) and his associates demanded and accepted extortion money (onetime payment for election expenses. i.e. Rs.51,000/- for the small water tankers and Rs.71,000/- for the big water tankers) for Delhi Assembly election held in February 2020 from all the water tanker owners. Upon which Dr.Rajender Singh paid partial amount of extortion money to petitioner but he was not satisfied with that amount of extortion money. Thus, he removed the water tankers of deceased Dr.Rajender Singh from Delhi Jal Board and also stopped pending

payment by Delhi Jal Board after winning the Delhi Assembly Election 2020.

13. It was further alleged that petitioner had total control over Delhi Jal Board. He was nominated Member DJB in 2015 (in first AAP Government) first time. Again, he was nominated as Member DJB in February 2020, just after winning of MLA election.

14. salient contents of the suicide note is as following “ प्रार्थना सेवा मे श्रीमान जी मैं एक बहुत ही सुंदर अपने परिवार के साथ जीवन जी रहा था मगर **AAP** के **MLA** प्रकाश झारवाल व कपिल नागर ने मुझसे **DJB** मे गाड़ी चलाने की एवज मे व मुझसे उधार बतौर काफी मौटा पैसा ले लिया जो कि मैंने अपने घर के जेवर भी गिरवी रख दिये और अब मैं पैसा वापिस मांगता हूँ तो ये मुझे परलोक सिधारने की धमकी देते हैं मैं अब काफी परेशान हूँ इन दो आदमियो की बजह से ये मुझे व मेरे परिवार को जान से मरवाने की धमकी देते हैं । कि अगर तेने हमारी कही शिकायत की हो । अब मैं इनसे इतना परेशान हूँ कि मैं अपनी जान दे रहा हूँ मैं इन्हे अपने जीते जी तो कोई सजा नही दिला सका मगर मेरे मरने के बाद इन्हे सखत से सखत सजा दी जाए आपकी अति कृपया होगी प्रार्थी **-sd English-**मेरे बैंक के साइन हैं । इन लोगो ने मुझे कई बार परलोक यमलोक व जान से मरने की धमकी दी है जो कि कुछ रेकॉर्ड है । धमकी टाइम **18/07/2019** शाम **8.20** , फिर दोबारा **19/07/2019** , **9.44** फिर तिवारा **19/07/2019**, **9.47**”.

15. Complainant also provided a mobile phone of Sh.Revadhar Bhat (Assistant/employee of deceased Rajinder Singh) alleging that a threatening call was made to the deceased Dr.Rajender Singh by petitioner from his mobile No.9999071851 on his (Revadhar Bhat) mobile No.9811292950 and the threatening call was recorded on phone wherein he has allegedly

intimidated Dr.Rajender Singh for dire consequences. The transcription of the threatening call is that *“Hello hello ji, Doctor Rajendra hai kya, sahib to nhi ha sahib ki tabiyat kharab hai ghar par hai, kiu kya ho gaya, sahib ko heart ki pareshani hai sir, Phone par bat kare yap hon par bat karna hi band kar diya, Nhi nhi wo ghar par hai phone mere pas hai doctor ne aaram karne ke liye kah rakha hai karlenge aap aap kon bol rahe hai, MLA bol raha hun Prakash Jarwal, Ji sir namashkar sir me boldunga sahib se kal bat karwa dunga sir, Kal tak agar unka phone nhi aaya to kah dena fir aisi taisi ho jayegi, Achchha....., Parlok sidhar jayenge fir thike, Yen.....”*

16. During further investigation, Mr.Revadhar r/o H.No.A-88, Durga Vihar, New Delhi who worked with the deceased at *“Chaudhary Clinic”*, was interrogated and his statement under section 164 Cr.P.C. was got recorded. In his statement, he has corroborated the allegations of the complainant. Beside him, several persons (name withheld because it is apprehension that they may threaten or pressurize by associate of MLA Prakash Jarwal) have been interrogated and all of them corroborated the version of complainant as well as suicide note. Their statements under section 164 Cr.P.C. have been got recorded. Several other statements under section 161 Cr.P.C. of other witnesses have been recorded, who supported

the version of the complainant and also supported the suicide note of the deceased.

17. It is admitted on behalf of the State that Anil Jarwal (brother of Sh.Prakash Jarwal, MLA) had filed anticipatory bail application on 01.06.2020 and the same was allowed by the Sessions Court of Rouse Avenue as no evidence has come on record stated by IO of the case itself.

18. It is fairly admitted that the name of the petitioner has been written with different pen which does not bear the signature of the deceased also on the second portion of the suicide note.

19. Learned APP further submitted that there is a nexus of Tanker Mafias run by MLA Sh.Prakash Jarwal with the help of his associates Kapil Nagar, Harish Jarwal and others. They have full control over operating the water tankers for supply of water to public in the area of Deoli and Sangam Vihar, because petitioner was a Member of Delhi Jal Board. Their individual role is yet to be ascertained. If the petitioner is released on bail, he may hamper and influence the investigation.

20. In addition to above, it is submitted that during investigation from JE Himmat Singh, it has come on record that the petitioner and his associates have pressurized him to disengage the water tankers of deceased Rajinder

Singh. His statement under section 164 Cr.P.C. was also got recorded. Moreover, the associates of petitioner have manhandled with the witness Sanjay Kumar and threatened him to withdraw his statement given before police on 07.06.2020. Sanjay Kumar has filed a written complaint in police station Neb Sarai on 08.06.2020 in this regard, the same is pending enquiry.

21. Learned APP further submitted that against petitioner, a FIR No.54/2018 under sections 186/353/332/323/342/504/506II/120B/109/114/34/36/149 IPC was registered at Police Station Civil Lines, in which, it was alleged that he along with other co-accused had assaulted the then Chief Secretary of GNCT of Delhi, a senior most IAS officer and he has been charge-sheeted after investigation along with other co-accused. In said case, learned Trial Court had taken cognizance and issued summons to the petitioner also. Nevertheless, the accused had been granted bail by this Court by imposing condition that *“the above noted FIR being the third FIR against the petitioner (Prakash Jarwal) for assault on a public servant, in case the petitioner indulges in any such illegal act in future the bail granted to the petitioner would to liable to be cancelled.”* Despite such condition, the accused continue to involve in illegal activities which is apparent from the dairy maintained by the deceased. Thus, present petition deserves to be

dismissed.

22. I have heard learned counsel for the parties and perused the material available on record.

23. It is not in dispute that wife of deceased made complaint on 09.04.2020 which is recorded as DD No.5378, just one week before the suicide, to Delhi Jal Board, but in said complaint, name of the petitioner as well as co-accused persons has not been named. Moreover, no allegations of threat or extortion made in the said complaint.

24. It is also not in dispute that deceased and his family members have been plying water tanker since 2006, but no complaint has ever made for extortion or harassment against petitioner or his alleged associates to any authority.

25. The respondent State has not denied the fact that the deceased and his syndicate were selling water Tanker illegally upon which a sting operation was conducted by News Channel IBN in the month of June, 2015 in which the deceased along with his associate were caught in camera in said sting operation. Thereafter, name of deceased and family members was blacklisted from DJB. The said fact is evident from RTI reply dated 24.04.2020 furnished by DJB.

26. Regarding allegations of stoppage of payments of deceased and his family, in reply to RTI application made on 27.04.2020, it is categorically stated by DJB that their payments never stopped and around Rs.62 lakhs paid to them from January 2019 to January 2020.

27. Moreover, to enquire about the fact as to why the water tankers of deceased were not engaged by DJB in the month of March, 2020 and April 2020, the Advocate of petitioner filed an application under RTI to which DJB replied that no application was filed by the deceased for engaging the tankers and further replied that the petitioner had not any position in DJB to influence the engagement of water tankers.

28. In the case of ***Sudhakar vs. State of Maharashtra: (2000) 6 SCC 671***, the Hon'ble Supreme Court held that "*circumstances of the transaction which resulted in death must have a proximate relation to the occurrence.*"

29. In the case of ***Ram Saroop vs. State of Delhi: 2017 SCC OnLine Del 8600***, the Hon'ble Supreme Court held that "*there has to be a proximate and live link between alleged commission of offence and suicide.*"

30. In addition, in the case of ***Sanju @ Sanjay Singh Sengar vs. State of M.P.: (2002) 5 SCC 371***, the Hon'ble Supreme Court held that "*presence of mens rea is the necessary concomitant of investigation.*"

31. Also in the case of ***Mahant Bhagwan Bhagat vs. G.N. Bhagat & Ors.: (1972) 1 SCC 486***, the Hon'ble Supreme Court held that “*documentary evidence will prevail over oral evidence.*”

32. In the present case, the phone conversation dated 18.07.2019 was with employee of the deceased, admittedly, not with deceased, is too remote a link which cover the offence under section 306 IPC. Through said call, the petitioner being MLA of the area, might have warrened the said employee and deceased for the reason, there were some complaints selling of water illegally on illegal considerations.

33. Fact remains that the deceased committed suicide on 18.04.2020, but immediate prior to said date, there were no allegations against petitioner in the ‘*Suicide Note*’ and ‘*Diary*’ recovered by the police. Thus, it seems, there is no proximity and link in alleged commission of offence. Moreover, regarding allegations of extortion of money for Delhi Assembly Election held in February, 2020 from all tanker owners were not complained by family members of deceased or any other tanker owner, however, made only in ‘*Dairy*’ and ‘*Suicide Note*’, some of which are without signature and in different handwriting. Thus, above said facts to be tested during the trial.

34. Regarding the allegations of threat and influencing the witnesses, the

Police has already taken cognizance and if in future, any incident of this nature happens, the police is at liberty to take action against such person as per the law.

35. Admittedly, brother of petitioner namely Anil Jarwal whose name was also mentioned in suicide note, has already been granted anticipatory bail by the court of Sessions vide order dated 02.06.2020 by observing that in the suicide note, there are different handwritings and no specific date of harassment mentioned

36. Keeping in view the above discussion and the fact that the petitioner is in Judicial Custody since 09.05.2020, however, petitioner no more required for further investigation and trial will take substantial time, I am of the view that petitioner deserves bail, without commenting on the merits of the prosecution case.

37. Accordingly, he shall be released on bail forthwith, on his furnishing a personal bond in the sum of Rs.25,000/- before Jail Superintendent concerned, if not required in any other case and surety of the like amount before the Trial Court on its normal functioning.

38. Petitioner shall not contact or influence the prosecution witnesses in any manner.

39. The Trial Court shall not get influenced by the observation made by this Court while passing the order.

40. The petition is, accordingly, allowed and disposed of.

41. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for information and necessary compliance.

42. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email

(SURESH KUMAR KAIT)
JUDGE

JUNE 24, 2020
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न्यायमेव जयते