

FIR No. 0728/21  
PS- Okhla Industrial Area  
U/Sec. 323/341/315/34 IPC &  
3(1)(s) of SC/ST (POA) Act  
State Vs. Bano

**17.11.2022**

Present : Sh. L.D. Singh, Addl. PP for the state.  
Sh. Aditya Aggarwal, Ld. Counsel and Shg. Naveen Panwar  
for applicant/accused.  
Sh. Jasman Singh Seth, Ld. Counsel for complainant along  
with complainant.  
IO of the case, SI Sanjeev Lehri.

1. Accused Bano has filed present regular bail application. Her interim bail application is also pending adjudication.
2. Present order be read as common order, for disposal of both the said applications.
3. Ld. Counsel for accused has submitted that considering the facts *viz* that accused has not breached bail bond conditions, that charge-sheet has been filed, that accused has not influenced the complainant, that accused has remained in custody for about seven months approximately and that accused has to take care of her grandchildren, regular bail may be granted to her.
4. *Per contra*, Ld. Counsel for complainant has highlighted certain facts for rejecting above applications *viz* gravity of the offences, the fact that accused may influence complainant and the fact that complainant is a victim, due to illegal acts of accused amongst co-accused persons. He has also referred to the notification issued by Department of Women and Child

Development dated 13.08.2014, to highlight the law that children of incarcerated parents are to be kept in a proper accommodation, provided by government. Based on said notification, he has claimed that issue of welfare of grandchildren of accused is met with, by said notification. Therefore, applications must be dismissed.

5. Ld. APP for the State has also opposed the bail applications in hand, on the similar reasoning, given by Ld. Counsel for complainant.

6. Arguments heard. Record perused.

7. Chargesheet in this case is already filed. Accused is on interim bail, since May 2022. She has not breached the said bail bond conditions. She is a senior citizen. She has remained in custody, for few months, during investigation. IO has not replied, to the effect that presence of accused outside jail, would be adverse to prosecution witnesses and evidence. Bail is a rule and jail an exception. Therefore, regular bail is granted to accused, subject to same terms and conditions, as mentioned in interim bail order dated 11.05.2022.

8. So far as reference to government notification is concerned, I find that one of the significant aspect of said law is "best interest of child". It is the said aspect which courts have to see, while appreciating facts of a particular case. In the case in hand, I find that being grandmother of children, whose parents are in jail, is the best person to look after them. Therefore, said notification does not help the cause of complainant.

9. The issues pertaining to gravity of offence, complainant being at receiving end due to alleged offence and other likewise aspects, as argued by Ld. Counsel for complainant, have to be appreciated, in the background

of the law that a person facing trial, is to be presumed innocent, till he/she is proved guilty. Trial is underway in this case. To look the matter, from the point of view of complainant only, will not lead to balancing of rights. Therefore, aforesaid arguments of Ld. Counsel for complainant do not help the cause of complainant. Those arguments can best be appreciated during further proceedings in this case.

10. Application in hand accordingly stands decided.

[PRASHANT SHARMA]  
ASJ-02, South-East/Saket/Delhi  
17.11.2022