

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 26.12.2022

+ **BAIL APPLN. 2986/2022**

SUSHEEL KUMAR ARYA

..... Applicant

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant :Mr. Sanjay Abbot, Mr. Shiv Chopra &
Ms. Sanjana Mishra, Advs.

For the Respondent : Ms. Priyanka Dalal, APP for State
Inspector Ajay, PS V.K. South

CORAM

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application under Section 439, Code of Criminal Procedure ("Cr.P.C.") has been filed for grant of regular bail in FIR No. 150/21, dated 02.04.2021, under Sections 304B/498A/34 of Indian Penal Code, 1860 ("IPC"), registered at Police Station Vasant Kunj.

2. The FIR was registered on a complaint given by Shri Naveen Kumar, brother of the deceased. He alleged that his sister, Smt. Rajesh Devi was married to the applicant and is a victim of dowry death.

3. The present case has a long history. The marriage between the applicant and the deceased was solemnized on 03.12.2014 and the first child out of the wedlock was born on 19.08.2017. A complaint was filed by the deceased with the Crime Against Woman Cell on 18.09.2018 and an application under Section 12 of the Domestic Violence Act, 2005, was also filed by the deceased on 24.09.2018 against the complainant.

4. It appears that those disputes were, thereafter, settled in the month of January, 2020, and the parties again started staying together. The second child out of the wedlock was, thereafter, born on 03.12.2020.

5. On 01.04.2021, the deceased was found hanging by the fan and the two children were found in an unconscious state in the bathroom. The house was found to be locked from inside. The FIR was, thereafter, registered on the complaint given by Naveen Kumar, brother of the deceased. The applicant was arrested on 03.04.2021 and is in custody since then.

6. The investigation, in the present case, is complete and the charge sheet has already been filed on 01.06.2021. It is informed that the charges against the applicant have already been framed under Sections 498A, 304B of IPC.

7. Learned Counsel for the applicant submits that the applicant is in incarceration since 03.04.2021. He submits that the investigation, in the present case, is long over and no purpose would be served by keeping

the applicant in further custody. He submits that the trial in the present case is being delayed at the instance of the family of the deceased and is not likely to be over in near future. The applicant cannot be kept in custody during the entire period of the trial. He states that there are no chances of tampering with the evidence as the investigation is already over and any other apprehension can be taken care of by imposing appropriate conditions.

8. He further submits that the only allegation of a demand is an alleged demand made by the applicant after the birth of the second child. Learned Counsel for the applicant submits that the same does not fall in the category of dowry.

9. Learned Counsel for the State opposes the bail application. She submits that the investigation clearly reveals that the deceased was subjected to torture and cruelty in relation to demand of dowry. She further submits that the autopsy of the deceased clearly indicates that she was subjected to cruelty and injuries found on the body were inflicted during the last six days of the death.

REASONING

10. Section 304B of IPC reads as under:

“304B. Dowry death

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to

cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

11. In the present case, the allegation of demand of dowry is sought to be corroborated on the basis of a complaint filed by the deceased in the year 2018. It is, however, significant to note that the said complaint and application filed under Domestic Violence Act was settled in the year 2020 and a child was also born after the said settlement. The only other allegation in respect of demand of dowry made by the family of the deceased is that the money was demanded by the applicant and his family after the birth of their second child. Whether such alleged demand falls within the definition of ‘demand of dowry’, and the nature of demand will be tested in trial. The Apex Court in **Satbir Singh v. State of Punjab**, had held that customary gift or payment in connection with the birth of child or ceremonies unrelated to the marriage do not fall within the ambit of dowry.

12. Further, reliance is placed on the statement given by the family members, including the sister of the deceased, who said that the deceased had called her on 30.03.2021, when she complained that the applicant had beaten her up three days back, and, that, he is pressurising

her to go to her father and get money. The factum of the call being made to the sister is said to be also corroborated by the CDR.

13. The basic ingredient to attract the provisions of Section 304B, IPC, is, firstly, that the death of the woman should have occurred under circumstances which are not normal. The conviction, by applying the provisions of Section 304B, IPC, is essentially based on the presumption that would necessarily mean that circumstances which are not normal or essentially the one where the reason of death is not ascertained.

14. The law presumes that deaths which are not normal, if had happened within seven years of the date of marriage and the victim was subjected to cruelty in connection with demand of dowry made before her death would be termed as dowry death. The deceased was found to have consumed substance containing phenolic compounds and was found to be hanging while the door of the house was found to be locked from inside. The reason for death is not stated to be consumption of substance containing phenolic compounds but asphyxia due to ante mortem hanging. Police at this stage has also not been able to find out as to how the door of the house was found to be locked from inside.

15. The presumption in law of a 'dowry death' is meant to act as a deterrent to the demand of dowry and to ensure that there is no victimization because of that. The allegations levelled will be tested in trial and at this stage considering the Application for Bail only the parameters enshrined in that regard are to be considered.

16. In *Savita v. State of Delhi, (2019) 10 SCC 29*, Supreme Court granted Bail to the accused charged for offences under Sections 498-A and 304 of the Indian Penal Code, 1860, considering that the accused had already been in jail for 27 months out of a total sentence of 10 years' rigorous imprisonment.

17. The applicant is in judicial custody since 04.04.2021, the chargesheet followed by supplementary chargesheet were filed on 02.06.2021 and 07.03.2022 respectively and the case is pending at the stage of prosecution evidence. The charges against the applicant would be tested at the time of trial.

18. At this stage, when the applicant has already spent more than 600 days in judicial custody, the investigation is already complete and the charge sheet has already been filed, there is no chance of the accused absconding or fleeing, if released on bail. Moreover, the same can also be taken care of by putting appropriate conditions. No apprehension can be raised about the witnesses being influenced.

19. The object of Jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time. The presence of the accused can be secured at the time of trial by putting appropriate conditions.

20. Without commenting further on the merits of the case, keeping the facts and circumstances in mind and the fact that the trial is likely to take some time, I am satisfied that the applicant has made out a case for grant of regular bail.

21. The applicant is, therefore, directed to be released on bail on furnishing a bail bond for a sum of ₹1,00,000/- (rupees One Lakh only) with two sureties of the like amount to the satisfaction of learned Trial Court / Duty Metropolitan Magistrate on the following conditions:

- a. He shall under no circumstance leave Delhi without informing the concerned IO;
- b. He shall not take adjournment before the Trial Court.
- c. He shall join and cooperate in case required for further investigation.
- d. The applicant shall not, in any manner, try to contact any of the witnesses.
- e. He shall provide his mobile number to the investigating officer (IO) concerned/SHO concerned at the time of release which shall be kept in working conditions at all times;

22. In the event of there being any FIR/DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing appropriate application for cancellation of bail.

23. It is also made clear that the observations made in the present case are only for the purpose of considering the bail application and

should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

24. In view of the above, the present application is allowed in the aforesaid terms.

DECEMBER 26, 2022

“SS / KDK”

AMIT MAHAJAN, J

