

IN THE HIGH COURT OF DELHI

Crl.M.C. No.640/2009

Date of decision: 14th July, 2009

Saroj Pandey & J.P. Pandey ... Petitioners
through: Mr. R.P. Shukla, Adv. with Mr. R.K. Solanki,
Adv. & Mr. J.S. Gill, Adv. for the petitioner.

VERSUS

State (Govt. of NCT of Delhi) Respondent
through: Mr. Alok Shankar, Adv. for Complainant.
Mr. Akshay Bipin, Standing Counsel for the
State.
Mr. Manoj Ohri, APP for the State.

with

Bail Application Nos.219/2009

Saroj Pandey ... Petitioner
through: Mr. R.P. Shukla, Adv. with Mr. R.K. Solanki,
Adv. & Mr. J.S. Gill, Adv. for the petitioner.

VERSUS

State (Govt. of NCT of Delhi) Respondent
through: Mr. Alok Shankar, Adv. for Complainant.
Mr. Akshay Bipin, Standing Counsel for the
State.
Mr. Manoj Ohri, APP for the State.

and

Bail Application Nos.271/2009

Jog Prasad Pandey ... Petitioner
through: Mr. R.P. Shukla, Adv. with Mr. R.K. Solanki,
Adv. & Mr. J.S. Gill, Adv. for the petitioner.

VERSUS

State (Govt. of NCT of Delhi) Respondent
through: Mr. Alok Shankar, Adv. for Complainant.
Mr. Akshay Bipin, Standing Counsel for the
State.
Mr. Manoj Ohri, APP for the State.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

GITA MITTAL, J(Oral)

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1. By way of CrI.M.C. No.640/2009 Shri J.P. Pandey & Smt. Saroj Pandey pray for setting aside the order dated 13th February, 2009 whereby the learned trial court rejected the application of Smt. Saroj Pandey and Shri J.P. Pandey praying for stay of proceedings under Sections 82 & 83 of the Cr.P.C. initiated against them. Bail Application No.219/2009 by Smt. Saroj Pandey and Bail Application No.271/2009 by Shri Jag Prasad Pandey have been separately filed under Section 438 of the Cr.P.C. These applications for anticipatory bail were pending when the order dated 13th February, 2009 was passed.

2. It is the case of the prosecution that the deceased Pinky was married to one Shri Saurabh Pandey, son of the petitioners before this

court on 3rd February, 2008. Ms. Pinky is alleged to have committed suicide on the intervening night of 18/19th November, 2008 by allegedly hanging herself from the ceiling fan. On that date, FIR No.459/2008 was registered by the police station Mandawali under Section 498A, 305B/34 IPC on 19th November, 2008 which was based on a statement of Shri Chet Ram Sharma, father of the deceased. In this FIR, apart from Saurabh Pandey, husband of the deceased, the police had also implicated the present petitioner as well as their daughter Ms. Supriya Jha as the accused persons. During the course of investigation, the investigating officer is stated to have recovered two suicide notes dated 18th November, 2008.

3. A postmortem was also conducted on the dead body of Smt. Pinky and the report of the postmortem has been obtained.

4. Smt. Saroj Pandey has filed an application before this court seeking anticipatory bail, which was registered as Bail Application No.219/2009 on 3rd February, 2009. In this application, a grievance was made on behalf of the petitioners to the effect that the investigating officer was not conducting investigation fairly and that no steps were being taken to obtain the opinion of the hand writing expert with regard to the suicide notes.

In these circumstances, an order was passed on 4th February, 2009 by this court directing the investigating officer to send the suicide note for comparison with the hand writing of the deceased to the Central Forensic Science Laboratory expeditiously.

5. Ms. Supriya Jha, daughter of the applicants had separately filed Crl. Writ Petition No.443/2009 praying for direction to the investigating agency to investigate the matter properly and to obtain an opinion from the hand writing expert with regard to suicide note. She also made a prayer for directions to transfer investigation of the case in FIR No.459/2008 to the CBI for fresh investigation.

6. A status report dated 13th July, 2009 has been filed today by Shri R.S. Chauhan, Assistant Commissioner of Police, DIU, East District, Delhi in Writ Petition (Crl.) No.443/2009 wherein it is stated that after obtaining the admitted hand writing of the deceased from the bank and place of work, the suicide notes and the admitted writing were sent for examination to the CFSL, Rohini. The CFSL report was obtained on 18th May, 2009 which has confirmed that the deceased wrote the suicide notes.

7. It has further been pointed out that Shri Saurabh Panday, husband of the deceased was arrested on 20th November, 2008 and he

remains in custody. Ms. Supriya Jha was arrested on 6th February, 2009 and stands admitted to bail in terms of order of this court.

8. During the course of investigation, the police also received a postmortem report wherein the doctor has opined that the death occurred on account of asphyxia following ante mortem hanging.

9. It has been contended by learned counsel for the complainant who is present that the report of the CFSL report ought not to be relied upon having regard to the statement made by father of the deceased with regard to the demands for dowry made by the petitioners. A challenge is laid to the recovery of the alleged suicide notes.

10. Mr. Manoj Ohri, learned APP for the State has submitted that trial court has initiated proceedings under Sections 82 & 83 of the Cr.P.C. against the petitioners for their non-appearance.

11. I find that the petitioners Smt. Saroj Pandey and Shri J.P. Pandey have filed Crl. Mis. Case No.640/2009 assailing the order dated 13th February, 2009 issuing non-bailable warrants against the petitioners and praying for stay of the proceedings under Sections 82 & 83 of the Criminal Procedure Code. In the order dated 13th February, 2009, the court also noted counsel's submissions that the anticipatory bail was pending before this court.

12. I would have been inclined to take a serious view of the matter with regard to the non-appearance of the petitioners before the trial court. However, in view of the material facts which have intervened during the pendency of these petitions which includes the investigation and the fact that the challan stands filed before the trial court which is seized of the matter and has taken cognizance, in the peculiar circumstances of this case, I am inclined to take a different view.

13. Yet another fact which has intervened is the order dated 4th February, 2009 passed by this court directing the investigation in the matter and requiring the investigating agency to obtain the report from the CFSL with regard to hand writing. The investigating agency has moved in the matter only after the order has been passed in the matter on 4th February, 2009. The report of the CFSL has been obtained by the investigating agency on 13th May, 2009 which report was not before the learned Additional Session Judge when he considered the anticipatory bail application of the petitioners. The same report was also not before the trial court when it passed the order dated 13th February, 2009.

14. Having regard to the foregoing circumstances, the order dated 13th February, 2009 passed by the learned Metropolitan Magistrate is

hereby set aside. As a result, the non-bailable warrants directed to issue by the learned trial court, shall also stand quashed.

15. The petitioners shall appear before the trial court on 20th July, 2009. The petitioner shall be at liberty to make a regular bail application before the trial court on or before the next date of hearing which shall be considered by the trial court in accordance with law.

16. In view of the orders which have been passed in Crl.Mis.Case No.640/2009, it is directed that the petitioners shall not be arrested till orders are passed by the trial court on the regular bail application filed by the petitioners.

The Bail Application no.219/2009 of Smt. Saroj Pandey and Bail Application No.271/2009 of Shri Saroj Prasad Pandey shall consequently stand disposed of in the above terms.

Dasti.

(GITA MITTAL)
JUDGE

July 14, 2009
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