

UNREPORTED

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 867/2009

DATE OF RESERVE: May 26, 2009

DATE OF DECISION: May 29, 2009

DAUJI RAM & ANR. Petitioners

Through: Mr. C.S.S. Tomar, Advocate

versus

STATE OF N.C.T. OF DELHI Respondent

Through: Mr. Manoj Ohri, APP for the State along
with Investigating Officer Inspector
Rishipal Sharma.

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

: **REVA KHETRAPAL, J.**

1. This is an application for grant of bail under Section 439 Cr.P.C. on behalf of the petitioners, Dauji Ram and Chhoti Devi, in respect of offences registered against them under Sections 498-A/304-B/34 IPC. On the basis of the statement of the complainant, Shri Than Singh, the father of the deceased, Smt.Bharti, an FIR bearing No.70/2009 dated 20.03.2009 was registered against the husband of the deceased Bharti, namely, Sonpal @ Sonu, Smt.Chhoti Devi (Mausi), the petitioner No.1 and Shri Dauji Ram (Mausa) the

petitioner No.2 under the aforesaid Sections. All the said three accused persons are in judicial custody since 21.03.2009.

2. The background facts are as follows. On 19.03.2009, a PCR call vide DD No.15A was received at Police Station Khajuri Khas that at House No/C-2/739, Gali No.12, Second Pusta, Sonia Vihar, Delhi, a woman had committed suicide. The same was entrusted to Head Constable Om Pal Singh of the aforesaid Police Station for taking necessary action, who reached the spot and found that the house was a two-room set, in one of which a woman aged about 22 years was found hanging with the help of a white cotton chord. A plastic chair was found lying on the bed in the same room. The Crime Team was called by Head Constable Om Pal Singh and on enquiry, it was revealed that the deceased Bharti was married to one Sonpal @ Sonu four years prior to the occurrence. After the marriage, the deceased was living with the accused Sonu, his aunt Chhoti Devi (Mausi) and his uncle Dauji Ram (Mausa) at the aforesaid house in Sonia Vihar, where they were subjecting her to harassment and torture, mental and physical, for not bringing dowry. The Executive Magistrate, Seelampur recorded the statement of Shri Than Singh, the father of the deceased, in which he stated that after the marriage, his daughter was being beaten and tortured by the petitioners and whenever he came to meet his daughter, the petitioners would not allow him to meet her. During the four

years of her marriage, he stated, the petitioners had allowed her to visit her parental home only once. On 19.03.2009, the husband of his daughter had telephoned him to say that his daughter was sick and he should come and visit her. On the morning of 20.03.2009, when they reached the house of Bharti, they were informed by the neighbours that their daughter had committed suicide by hanging herself.

3. On the aforesaid statement of Shri Than Singh, as already stated, the First Information Report was registered and all the three accused persons were arrested by the police. Post mortem was conducted and the cause of death was opined to be “Asphyxia as a result of ante-mortem hanging”. The statements of the witnesses under Section 161 Cr.P.C. were recorded, including the statement of Shri Than Singh, the father of the deceased, Smt.Omwati, the mother of the deceased and Shri Raju Singh, the uncle of the deceased. The said witnesses stated that after a few days of the marriage of Bharti with Sonpal @ Sonu, her husband and his Mause and Mausie, Dauji Ram and Chhoti Devi, who were residing in the same house, started harassing and beating the deceased for bringing insufficient dowry. The husband of the deceased (Sonpal @ Sonu) demanded a plot of land. Since the said demand could not be fulfilled by them, the torture of their daughter Bharti continued and she was regularly beaten by the aforesaid three persons. Ultimately, since she was not in a

position to bring money for the plot, Bharti had been compelled to commit suicide. It was further stated by the mother and the father of the deceased that a month prior to the incident, they had gone to visit their daughter and after a lot of difficulty, they were allowed to meet the deceased, who told them that she was being harassed by the aforesaid three persons to the extent that she wanted to commit suicide.

4. On the aforesaid facts, the learned counsel for the petitioners submitted that, though the FIR had been registered under Sections 498-A/304-B/34 IPC, the ingredients of the said offences were not made out. He contended that in order to attract the provisions of Section 304-B IPC, there must have been a demand for dowry and that too soon before the death of the deceased, and, in the instant case, the contents of the FIR showed that the father of the deceased, in the first instance, though he stated that the deceased was being beaten and tortured by the accused persons, there was no reference to any dowry demand by him. There being no reference in the FIR to any dowry demand, he further contended, subsequent reference to the demand for dowry by way of a plot of land, as set in the statements of the father, the mother and the uncle of the deceased, could not be relied upon, being an after-thought. Thus, the learned counsel for the petitioners submitted that the contents of the FIR, even if taken to be wholly correct, no offence under Section 304-B IPC is made out against

any of the accused persons. Further, the learned counsel submitted, in the statements of the father, the mother and the uncle of the deceased, the only allegation was that the husband of the deceased (co-accused Sonpal @ Sonu) had demanded a plot of land, but there was no such allegation against the present petitioners. Reliance was placed by the learned counsel for the petitioners on the judgment of a learned Single Judge of this Court in ***Smt.Inderjeet Kaur Vs. State*** reported in ***2005(2) JCC 720*** to contend that the petitioners deserved to be granted bail as the ingredients of the offence under Section 304-B IPC were non-existent.

5. Mr.Manoj Ohri, the learned Addl. Public Prosecutor for the State, on the other hand, vehemently opposed the grant of bail to the petitioners on the ground that there was sufficient evidence on the record to *prima facie* suggest that all the three accused persons were guilty of the commission of the offences under Sections 498-A/304-B/34 IPC. He submitted that the contents of the challan revealed that the deceased was being harassed and tortured for dowry and the aforesaid harassment and torture, including beatings which were being regularly meted out to her, were on account of the insufficient dowry taken by her to the house of her in-laws and the demand for a plot of land by them. The deceased, he further submitted, was not allowed to meet her parents or to go to her parental home and was virtually a prisoner in her matrimonial home. On

the one occasion, when her parents visited her house to meet her, she complained to them that such was the harassment and torture meted out to her that she wanted to commit suicide.

6. The learned Addl. Public Prosecutor for the State relied upon the judgment of the Hon'ble Supreme Court in ***Devi Lal Vs. State of Rajasthan AIR 2008 SC 332***, to contend that the statement of a witness for the purpose of enabling the Court to arrive at a finding that the ingredients of the offence under Section 304-B IPC had been established, must be read in its entirety. It is not necessary for a witness to make a statement in consonance with the wording of the statute and what is needed is to find out as to whether the evidence brought on record satisfies the ingredients thereof. In the instant case, the evidence brought on record clearly establishes that the deceased Bharti had all along been subjected to harassment, torture and even beatings on the ground that her father had not given enough dowry to her at the time of her marriage. Relying upon the decision of the Hon'ble Supreme Court in the case of ***Devi Lal*** (supra), Mr. Ohri also contended that for proving the said fact, it was not necessary that the demand of any particular item should have been made. In any event, he submitted, in the instant case after the recording of the FIR, the statement of the father of the deceased Bharti had been recorded, in which he clearly stated that the demand of her in-laws was for a plot of land. The

statements of the mother of deceased Bharti, Smt.Omwati and her uncle were to the same effect and corroborated the statement of the father.

7. Having heard the learned counsel for the petitioners and the learned Addl. Public Prosecutor for the State, I am of the view that it bears keeping in mind that this is not a case where omnibus allegations have been made against all the members of the family, inasmuch as the other in-laws of the deceased Bharti, who were not residing with the deceased, have not been roped in the case. The First Information Report was lodged only against the accused persons, with whom the deceased had been residing during the four years' duration of her marriage. Accordingly, on the facts, as narrated in the challan, and as they emerge from the statements of the parents of the deceased, *prima facie*, in my view, the ingredients of the offence under Section 304-B IPC must be held to be made out. Indubitably, there must exist a live and proximate link between the cruelty and harassment, the demand for dowry and the resultant death of the wife so as to form a cause and effect nexus. It is so evidenced by the language used by the legislators while drafting Section 304-B IPC and it has been so interpreted in a catena of judicial decisions. Such a live and proximate link, in my view, is *prima facie* clearly made out in the instant case, which, coupled with the presumption raised by virtue of Section 113-B of the Evidence Act, disentitles the petitioners to the grant of bail.

8. Reliance placed by the learned counsel for the petitioners on the decision of this Court on the case of ***Inderjeet Kaur*** (supra) is also misplaced, as in the said case, the learned Single Judge had arrived at the conclusion that even if the entire contents of the FIR as well as the statement of the deceased's mother are taken at their face value and taken to be true and correct, no offence under Section 304-B IPC was made out qua the petitioners (not including the husband). It was also noticed in the said case that the learned counsel for the State had been unable to point out any specific demand of dowry having been made on the part of the petitioners. In the present case, clearly it is not so. The statements of the father, the mother and even the uncle of the deceased leave no manner of doubt that the deceased was imprisoned in her own house, taunted, tortured and beaten by the petitioners on account of the fact that her parents had not satiated their lust for dowry. The parents of the victim were not allowed to interact with her. This by itself is a circumstance which speaks volumes and not much imagination is required to arrive at the inference which follows viz., they did not consider it worth their while to maintain ties with the other side who had not lived upto their expectations. The victim bore the brunt of it to the point that she preferred to snap her link with life. In such circumstances, to say that the father of the victim, in the FIR, should have come out with minute

details and a precise statement in consonance with the statute would, in my view, tantamount to dogged refusal to read and view the evidence in its proper prospective.

9. Bail Application No.867 of 2009 accordingly stands dismissed.

REVA KHETRAPAL, J.

MAY 29, 2009

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