

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

+ BAIL APPL. NO.725/2011

Date of Decision : 08.11.2011

SANJAY KUMAR SINGHAL

..... Petitioner

Through: Mr. V.Madhukar, Adv.

Versus

STATE OF DELHI

..... Respondent

Through: Mr. Sunil Sharma, APP

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. Whether Reporters of local papers may be allowed to see the judgment ? | NO |
| 2. To be referred to the Reporter or not ? | NO |
| 3. Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (oral)

1. This is a petition for grant of anticipatory bail filed by the petitioner, who is the husband of the deceased. An FIR No.109/2011, u/S 304B/34 IPC, P.S. Samaypur Badli was registered on the basis of a complaint made by one

Sh.Karam Chand Gupta, S/o Late Sh.K.C.Gupta against the present petitioner, parents-in-law and sister in law of the deceased.

2. It is alleged in the complaint that the deceased, Lalita Gupta was married to the present petitioner on 27.11.2009 according to Hindu rites and ceremonies. At the time of marriage, keeping in view the financial position of the complainant, a sum of Rs.15-16 lacs was spent on the marriage. The deceased was highly educated and was working as a teacher and earning Rs.10,000/- approximately. Soon after the marriage, the deceased was subjected to mental cruelty, harassment and physical assault by her husband and other family members with a view to get more dowry out of sheer greed for money. It is alleged that she was denied the basic day to day needs and subjected to filthy and vulgar language and humiliation repeatedly. It is further stated that on 12.4.2010, when she was in family way, it was alleged by the present petitioner that the

child in the womb of the deceased was not that of the present petitioner. She was forced to abort the child. The deceased, out of desperation shifted to her parent's house sometime in January. On 2.8.2010 in the morning she had informed her brother, who was going to drop her at the bus stop, that she will be a little late as her husband i.e. the present petitioner was coming to meet her in, Japanese park. It is alleged that the petitioner might have given her some substance for eating after which her health condition deteriorated in the evening and she was taken to Jaipur Golden Hospital where she was declared as brought dead. Since the police failed to register an FIR, father of the deceased was constrained to lodge a complaint with the learned ACMM, Rohini Courts, Delhi where upon the present FIR was registered.

3. The case is at the stage of investigation. The petitioner had filed an application for grant of anticipatory bail which was rejected by the Court of Sessions.

4. Feeling aggrieved, the present bail application has been filed. It has been contended by the learned counsel for the petitioner that in order to satisfy the ingredients of Section 304B IPC, one of the basic requirement is that there must be proximity in the demand of dowry and the date of death in order to give rise to a presumption under Section 113B of the Evidence Act 1872, against the present petitioner. It is contended that admittedly in the instant case, the deceased came to her parent's house sometime in January, while as, she died in the first week of August, and therefore, there is no proximity of time between the date of alleged demand of dowry and the date of death, so as to draw any presumption, in terms of the Evidence Act, against the petitioner. Further, it is contended that she has not die at the matrimonial home and therefore, the petitioner is sought to be falsely implicated by the father of the deceased on account of loss of his child.

5. The second submission of the learned counsel for the petitioner is that the allegation that the death of the deceased might have happened on account of some poisonous substance having been given by the present petitioner is only a surmise and conjecture. As a matter of fact, it is stated that the very fact of the petitioner having met the deceased, in itself is a conjuncture in as much as, it was only stated that the deceased would be meeting the petitioner, while as there is no prima facie evidence to show whether she had met the petitioner or not.
6. So far as the allegations of the poison having been given to the deceased is concerned, it is contended that 'Aluminium Phosphide' has been found in the Forensic Science Laboratory in the Viscera report of the deceased. It is contended that this could not have been given by the petitioner to the deceased for the simple reason that the MLC as well as the post mortem report filed by the investigating agency shows that the deceased was

brought to the hospital by her family members who had reported that while eating her food, she had fallen giddy and thereafter, collapsed whereupon she was taken to Jaipur Golden Hospital. It is contented that, if at all, she had died, it is only on account of poison which she might have consumed herself, and therefore, the offence under Section 304B IPC could not have been made out against the petitioner. It is also contended that according to Modi's Toxicology, so far as the poison 'Aluminium Phosphide' is concerned, it is a kind of poison, which will create ulcers in the mouth, if taken orally making it very painful for the incumbent to have the second morsel which is against the prosecution story that the deceased had fallen ill after consuming food. It is surmised that the brother of the deceased, himself, might have given something to eat to the deceased. It is because of the aforesaid submissions, the learned counsel for the petitioner has prayed for grant of anticipatory bail.

7. The learned APP has vehemently contested the plea of the petitioner for grant of bail. He has relied upon the judgment of the Apex Court in case titled **Samundar Singh Vs. State of Rajasthan** AIR 1987 SC 737 and stated that the deceased had died in less than a year's time from the date of marriage and the case is still at the investigation stage, therefore, the grant of anticipatory bail to the petitioner is going to hamper the investigation.
8. Apart from that, it is contended that there are specific allegations made by the brother of the deceased who was informed by the deceased herself that she will be meeting the present petitioner during the course of the day on 2.8.2010, where upon it is possible that the petitioner might have given some substance to the deceased to eat which turned out to be poisonous. It is contended that in any case, these are matters of investigation and have to be verified during the

interrogation of the petitioner and the examination of the witnesses.

9. I have heard the submissions made by the respective sides and gone through the record.
10. The case is admittedly at the threshold of investigation and the deceased who was of young age died in suspicious circumstances, in less than a year's time from the date of her marriage. It was specifically stated by the brother of the petitioner that the deceased had informed him on 2.8.2010 while he was going to drop her at the school that she would be late on the said date on account of the fact that she was intending to meet the petitioner and incidentally on the same day, the incident has taken place. Therefore, the possibility of foul play by the petitioner has to be investigated and this can be done only by interrogation of the petitioner.
11. So far as the question of proximity of time between the date of the death and the date of the last dowry demand, which is stated to have been made in January,

is concerned, it is stated that this is also a question of investigation. The nature of allegations against the petitioner being very serious in nature, I do not feel that it is a fit case for grant of anticipatory bail in view of the decision of the Apex Court in Samundar Singh's case (supra). Accordingly, the bail application is dismissed.

V.K. SHALI, J.

NOVEMBER 08, 2011
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