

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

+ Bail Appln. No.1413/2011

**Reserved on: 16.11.2011
Pronounced on: 21.11.2011**

Krishna Devi

..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Adv.,
Advocate with Mr. Sumit
Chandra, Advocate

Versus

State Govt. of NCT of Delhi

..... Respondent

Through: Ms. Jasbir Kaur, APP for State
Mr. R.K. Tarun, Advocate for
the complainant

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

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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 ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

M.L. MEHTA, J.

1. This application under Section 438 Cr.P.C has been preferred by the petitioner for grant of anticipatory bail. The petitioner is the mother in law of the deceased Ms. Sangita Sharma, who was married with Pushpender on 29.6.2006. Ms. Sangeeta had committed suicide on 21.7.2011 while she was staying at her matrimonial house. The MLC declared, “ H/O hanging and patient declared brought dead in the

casualty”. Since she had died an unnatural death within 7 years of her marriage, the SDM was informed and inquest proceedings under Section 176 Cr.P.C were conducted. The SDM recorded the statement of father and mother and brother of the deceased. In their statements they allegedly stated that the deceased was tortured for bringing less dowry and this led to her committing suicide. An FIR No.498/304B/34 IPC was registered against the husband, mother in law(petitioner herein) and others. Various allegations of demand of dowry and resultant torture were made by the father of the deceased in his complaint made to the police. Some of those demands were narrated specifically. One such was payment of Rs.2 lac to Pradeep (husband of the deceased) in the presence of mother in law (petitioner herein) of the deceased at their residence. One suicide note was also found in the note book which was recovered from the room of the deceased.

2. Learned senior counsel for the petitioner took me through the order dated 27.9.2011 passed by learned Special Judge wherein it was stated that “in the last month of 2010, he has also given Rs.2 lac to Pushpender in the presence of his mother Krishna, at their residence”. Referring to this part of the order passed by learned Special Judge, the learned senior counsel stated that in the month of November, 2010 the petitioner had gone to Mumbai and remained there till December 2010 and so it could not be said that the father of the deceased had given Rs.2 lac to the petitioner in the presence of his mother i.e. petitioner herein. Similar submission was made before the Special Judge and he dealt with this submission reasoning that the death occurred when the petitioner was very much present at home and in any case the cruelties

were being inflicted from time to time. With these reasoning, he recorded that the allegation of demand of dowry on that count cannot be said to be false.

3. Taking what is stated by learned senior counsel to be correct that the petitioner was away to Mumbai from 14.11.2010 to December 2010. In addition to the reasoning given by learned Special Judge, there are more relevant facts and circumstances to reject this contention of learned senior counsel for the petitioner. I have looked at the statement made by the father of the deceased to the police on which the FIR came to be registered. It may be seen that what he had stated was that in the month of December 2010 Sangeeta had come to their house in Bareilly and told his wife that her in laws were demanding Rs.5 lac and he then told her that he could give only Rs.2 lac and that he gave Rs.2 lac to Pushpender in front of his mother (petitioner). Nowhere he stated as to the date of his having made the payment to Pushpender in the presence of his mother in December 2010. This appears to be a wrong interpretation of the statement made by the father of the deceased, by learned Special Judge in the manner as quoted above. The complainant also made supplementary statement which could not be outrightly discarded at this stage. In his supplementary statement, he also stated about the source of his arranging money for making the payment to the petitioner and to the in laws of her daughter. The said amount was stated to have been withdrawn by his son from the bank account. He very categorically stated in his answer to the question raised by the IO that it was in last days of February, 2011 that he had gone to take his daughter Sangeeta

and he gave Rs.2 lac to Pushpender in the presence of her mother in law. This supplementary statement could not be outrightly discarded and was worth consideration.

4. Further during investigation, one diary was also found from the bedroom of the deceased. Same had some writing of dated 19th and 20th December 2010 wherein she had implicated not only her husband but also her in laws for torturing her. The suicide note specifically refers them as her tormentors. The diary and the said note have been sent to FSL for comparison and the report is stated to be awaited. It has also come in the statement of witnesses under Section 161 Cr.P.C that the deceased had made phone calls to them regarding torture at the hands of her in laws. The details of those calls were also under collection and verification.

5. Before proceeding to refer to the judgments relied upon by the learned counsel for the petitioner, it may also be noted that the petitioner earlier filed two applications for grant of anticipatory bail before the Court of learned ASJ which came to be dismissed vide detailed and reasoned orders on 12.8.2011 and 27.9.2011. Filing of instant petition within a week after the order of learned ASJ dated 27.9.2011 was nothing but an abuse of the process of law.

6. Learned senior counsel referred to various judgments of this Court and the various High Courts as well as the Supreme Court. I have gone through all those judgments and I am of the view that they were not applicable to the facts and circumstances of the present case. There was, however, no dispute with regard to the dictums of law laid

in these cases that in a dowry death case, the anticipatory bail could be granted. This was held in *M.P. Lohia v West Bengal and another* AIR 2005 SC 792 relied upon by the petitioner. There is a catena of judgments of the Supreme Court and reference can be made to 2011 (1) JCC (1) wherein it is held that no inflexible guideline or a straightjacket formula can be provided for grant or refusal of anticipatory bail and it all depends on the facts and circumstances of each case.

7. The decision in *Gursharan Kaur and another* [2011 (2) JCC 836, relied upon by the petitioner, was on different facts. The name of the petitioners was not given in the FIR in that case, which is not the position in the case in hand.

8. The facts in the case of *Savitri Aggarwal v State of Maharashtra* [(2009) CrI.L.J 4290] are also distinguishable from the case in hand. In this case, the learned ASJ had granted anticipatory bail on account of two contradictory dying declarations of the deceased and upholding his view, the order of the High Court was reversed by the Supreme Court.

9. In the case of 2005(2) JCC 720 the facts and circumstances were also different than in the present case. In this case, the allegations of

demand of dowry was only against the husband and not against any other in laws and for the latter, the suicide was subjected by the deceased in her parental house and there was no connection between the mother in law and the victim for considerable time before her committing suicide.

10. In view of my above discussion and keeping in view the seriousness of the offence committed by the petitioner, I am not inclined to grant anticipatory bail to the petitioner. The petition is hereby dismissed.

M.L. MEHTA
(JUDGE)

November 21 , 2011

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