

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

+ BAIL APPLN.1036/2013

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Reserved on : 29th October, 2013

Date of decision : 19th November, 2013

BISHAN DASS DURGA Petitioner
Through : Mr. Anurag Jain, Adv.

versus

STATE NCT OF DELHI Respondent
Through : Mr. Karan Singh, APP.
Mr. Sanjay Suri, Adv. for
complainant.
S.I. Gopal, P.S. Shakar Pur,
Delhi.

**CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA**

JUDGMENT

1. The petitioner is seeking regular bail in FIR No.835/2012 under Sections 498A/304B/34 IPC and Section 4 of Dowry Prohibition Act.
2. The petitioner is the father-in-law of Payal. On 12th November, 2012 at about 6:00 am, the petitioner found Payal hanging from the ceiling fan whereupon he immediately informed the complainant, Naresh Batra (father of Payal) who along with his wife, son and daughter reached the petitioner's house. The deceased was taken to Shanti Mukund Hospital where she was declared dead. The complainant lodged the FIR in which he made

allegations of harassment and demands against the accused persons. It was alleged that the deceased was beaten by her husband and mother-in-law. It was further alleged that money and gifts were demanded within 10-15 days of marriage; separate house was demanded for son-in-law and recently Renault Duster was demanded. As per the post-mortem report, the cause of death is asphyxia due to ante-mortem hanging.

3. On 1st May, 2013, the police filed the chargesheet after investigation against the petitioner and the aforesaid family members of the petitioner.

4. The hearing of this bail application was deferred from time to time till the recording of the statements of the six material witnesses by the Trial Court. The statement of all the six material witnesses have now been recorded. Copies of the statements have been placed on record by the petitioner.

5. PW-1, Jasvinder Maakheja, an independent material witness, lives on the second floor of the building in which the accused persons are residing. On the fateful morning of 12th November, 2012, PW-1 went to the third floor and saw Payal hanging from the ceiling fan. PW-1 told the accused persons to bring down the body whereupon the accused - Saurabh cut the '*chunni*' and brought down the dead body and kept it on the bed. PW-1 tried to revive the deceased by pressing her chest while accused - Gaurav gave her mouth to mouth resuscitation. PW-1 informed the police. The parents and the other family members of Payal reached the accused persons' residence within five minutes. PW-1 accompanied the

body of Payal to the hospital. PW-1 deposed that Gaurav (husband of the deceased) tried to revive Payal many times on the way to the hospital.

6. PW-1 to PW-6 have made some important admissions in their cross-examination. PW-2 to PW-5 deposed that Payal knew Gaurav before marriage and they worked together on various projects of interior decoration before and after marriage. PW-6, Jagdeep Madan, deposed that Payal and Gaurav had a love affair which resulted in their marriage. PW 6 deposed that Payal told her that she had not told anything to her parents and she had married Gaurav against their wishes. PW-1 deposed that accused had a Honda City Car, two motorcycles and a scooter prior to the marriage of Payal. The motorcycles and scooter were used by the sons of the petitioner and one more bike was purchased by the petitioner after the marriage of Payal. PW-2 also deposed that the accused had a Honda City car and bikes. PW-2 deposed that Gaurav was having a furniture showroom in Geeta Colony. PW-1 deposed that Payal never complained of dowry demands, harassment or torture though she demanded separation from her in-laws one-and-a-half months before her death. PW-1 further deposed that he never saw any quarrel between the deceased and her in-laws and Payal being beaten up by the accused persons. PW-2 further deposed that he never made any complaint during the lifetime of Payal to any authority for harassment or demands.

7. PW-2 to 5 are the father, mother, brother and sister of the deceased, made material improvements in their deposition made

before the Court vis-à-vis the statement made to the police/SDM earlier. They were confronted with their previous statements at the time of cross-examination. The following improvements were made by the aforesaid witnesses:-

- The demand of more gifts was made on Holi as the gifts were not enough to distribute among relatives on Holi.
- The mother-in-law taunted Payal that her family just came to have dinner on her birthday without any gifts for them
- On the occasion of “Nirjala Ekadashi”, the mother-in-law was not happy on seeing the fruits, clothes and cash sent by the father of the deceased and she questioned the deceased what Gaurav saw in Payal and that she could get 20 others like her for Gaurav.
- The deceased was beaten up by her husband on the road and that the deceased came to her parent’s house and two days later, the petitioner with Gaurav came to the parent’s house and apologized and assured that demands of car and bikes would not be made and took the deceased back.
- Three to four months after the marriage, on Raksha Bandhan suits, diamond ring and Rs.5,100/- were given to Payal and Gaurav whereupon Payal’s brothers-in-law argued and quarreled with her that they had not got anything for them.
- The petitioner, his wife and Gaurav demanded a Duster Car and brothers-in-law demanded motor cycles.
- PW-4 took dry fruits, sweets, Rs.2,100/- for Gaurav, Rs.1,100/- for other family members and a fully automatic washing

machine on Diwali to which the mother-in-law quarreled with Payal about gold coins and clothes not being given and that PW 4 assured that the same would be given next morning.

8. The defence set up by the accused in the cross-examination of the six witnesses is that Gaurav and Payal were having a love affair for more than three-and-a-half years; Payal's father came to know of the said love affair about two to three months before the marriage; Gaurav's family approached Payal's family for marriage in pursuance to which Gaurav and Payal got married on 23rd February, 2012; Payal was insisting her husband to separate from the joint family house immediately to which Gaurav was not agreeable as he wanted to separate after Diwali; Payal was a stubborn, aggressive and emotional girl; Payal wanted to lead an independent modern life with her husband separate from her in-laws; Payal attempted to commit suicide twice before; Payal purchased Phenyl for committing suicide if Gaurav did not separate from the joint family; Payal committed suicide because of her obstinacy for shifting immediately; Payal's sister also threatened to commit suicide as she did not want to stay with her husband; the accused persons have furniture showrooms at Geeta Colony, New Lahore Colony, Shastri Nagar, a house at Anarkali and a plot allotted by DDA at Rohini besides the 200 sq. yard house at Bank Enclave; the interior decoration of the house of accused was done by Payal; the relationship between Payal and the accused were cordial; the atmosphere at the joint family house was calm and cordial; photographs show Payal being happy with Gaurav and the

other accused persons in various events; Payal is shown feeding cake to Himanshu in a clipping of Himanshu's (one of the co-accused and brother-in-law of Payal) birthday on 21st August, 2012; Payal stayed with her mother-in-law for her cataract operation at the Centre for Sight for three days; the complainant and his family have leveled false allegations against the accused persons regarding demand of dowry and torture out of emotion and vengeance; the complainant engaged a private counsel from the very beginning; the complainant's family gave statements to the police after consulting a lawyer and taking advice from the police.

9. In *Narender Singh Arora v. State*, 2010 (173) DLT 244, this Court noted that whenever a woman dies an unnatural death within seven years of her marriage at in-laws' house, whatever be the cause of death, the parents of the deceased want the in-laws to be hanged. This Court observed truth is losing significance because of the ego of the litigants to see that in-laws should be hanged. This Court further observed that normally in-laws are convicted on the testimonies of parents of the girl who, in a fit of anger or because they had lost their daughter, are not prepared to believe that their daughter could commit suicide for any other reason. The testimony given by the complainant in such cases is not a normal testimony. The deceased's father and other family members who deposed in the court testified after the death of their daughter and their testimony is coloured with the loss they suffered due to sudden death of the daughter little realizing that she committed

suicide not because of dowry demands but could be because of her fragile and sensitive nature.

This Court further observed that suicide is a known phenomenon of human nature. Suicides are committed by living human beings for various reasons, some are not able to bear the normal stresses which are common in life; some are not able to cope up with the circumstances in which they are placed; and some commit suicide because of frustration of not achieving the desired goals. There are many cases where students commit suicide because they failed to achieve certain percentage of marks. Some commit suicide because they are not able to retain top position, some commit suicide because they are not able to cope with the demands of life. Some commit suicide because they suffer sudden loss, some commit suicide out of fear of being caught. There are various reasons for which suicides are committed by men and women. All suicides are unnatural deaths. Suicide is a complex phenomenon. One, who commits suicide, is not alive to disclose as to what was going on in his or her mind when he or she committed suicide. There is no presumption that every suicide committed by a married woman in her in-laws' house or at her parents' house has to be because she was suffering harassment at the hands of her husband or her in-laws.

10. In *Hari Gopal Wadhwa v. State*, (143) 2007 DLT 210, this Court observed that no doubt, an unnatural death is always a cause for concern and if proved that the daughter-in-law of the family was compelled to take her own life as it was rendered not worth

living by the in-laws, they must suffer. But personal liberties have to be preserved, meaning thereby, in an appropriate case, accused has to be set free till trial concludes.

11. On careful examination of the statements of the six witnesses, this Court is of the prima facie view that although it is difficult to say ultimately what shape the trial would take after completion of the entire evidence, but if ultimately it is found on evidence that Payal was a very sensitive person and committed suicide because she could not bear the pressure of living in joint family, the possibility of the petitioner succeeding in establishing their defence cannot be ruled out.

12. The petitioner as well as four other family members namely, his wife and three sons including the husband of the deceased are in custody since 13th November, 2012.

13. The petitioner himself had informed the complainant about the demise of Payal without any delay.

14. There was no ante-mortem injury on the body of the deceased.

15. There is no possibility of the petitioner influencing any witness since the statements of the six material witnesses have already been recorded by the learned Trial Court.

16. There is no material to show that if released on bail, the petitioner will misuse the liberty granted to him to subvert the justice.

17. In view of the aforesaid, the bail application is allowed and the petitioner is ordered to be released on bail on his furnishing

personal bond in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of the concerned Court. The petitioner is directed to surrender his passport, if any, with the Trial Court and he shall not leave the country without prior permission of the Court.

18. All observations made hereinabove for the purpose of dealing with the bail application and shall not be considered at the time of trial of the case.

19. Dasti.

J.R. MIDHA, J.

NOVEMBER 19, 2013