

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

% Judgment pronounced on: 6th April, 2015

+ **Bail Appln. No.437/2015**

NITIN KUMAR Petitioner
Through Mr.Maninder Singh, Adv. with
Mr.Ajay Pipaniya, Mr.Rohit Arora,
Ms.Aekta Vats, Mr.Jagmeet
Randhawa & Mr.Dinhar Takiar,
Adv.

versus

STATE Respondent
Through Ms.Jasbir Kaur, APP for the State
along with SI Vijay Kaushik, PS
R.K.Puram, in person.
Mr.Arvind Kr. Sharma, Adv. for the
complainant.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present application has been filed by the petitioner under Section 439 Cr.P.C. read with Section 482 Cr.P.C. for grant of regular bail in case FIR No.713/2014, under Sections 498-A/304-B/34 IPC, registered at PS R.K.Puram, Delhi.

2. The petitioner is working as Assistant General Manager in the Reserve Bank of India and was residing along with his family members. His marriage was solemnized with the daughter of the complainant, named, Konica on 26th February, 2012, through

newspaper matrimonial. The petitioner's version is that no dowry articles were ever demanded by the petitioner or his family members at the time of marriage and whatever stridhan was given by the parents of the deceased at the time of marriage, the same was never demanded by the petitioner or his family members. On the day of the incident, i.e. 2nd October, 2014, Konica deceased locked herself in a room of her matrimonial house. Thereafter, the petitioner knocked on the door several times but received no response. He also tried to find her in the toilet. Thereafter, the petitioner made a call to the deceased's brother, namely, Naveen and told him that the deceased had kept herself locked in a room, upon which the brother of the deceased replied to the petitioner that "*solve your problem on your own*". With no option left, the petitioner rushed towards the balcony and cut the wire netting of the door of the room adjoining the balcony with the help of the knife and found that the deceased had hanged herself with the ceiling fan. Thereafter, the petitioner called her sister and took the deceased to the Rockland Hospital, where she was declared 'brought dead'.

3. The petitioner is in judicial custody since 2nd October, 2014. On the date of incident, Konica deceased locked herself in a room of her matrimonial house and committed suicide by hanging herself. The charge-sheet in the matter has been filed on 29th December, 2014.

4. The father of the deceased Konica lodged the aforesaid FIR. He stated in the complaint that his daughter had done BBA, MBA, Ph.D. in Finance and was working as a Manager in the Punjab National Bank. At the time of her marriage, whatever demand was

raised, it was fulfilled by them. One WagonR Car, Food & drinks, venue of marriage, etc. everything was done at the time of marriage as per their wishes but their daughter never seemed happy. She was not allowed to visit their house; in two years she had visited only 3-4 times and was allowed to stay only for 15-20 minutes. 20 days earlier when he called, then the petitioner did not allow to talk to his daughter and stated that the relation of father-daughter is over after the marriage. When his daughter gave birth to a son, then also the family members of the petitioner talked to him in bad manner and said that *"you did not bring anything upto our standards"*. They tortured his daughter; her mother-in-law, husband, his three sisters and uncle together made this position of his daughter. They killed her.

5. The status report has been filed by the learned APP for the State who has strongly opposed the bail application of the petitioner. His contention is that two days prior to the incident, Konica was crying on telephone by informing her family members about the cruelty, harassment and the demand of car by her husband and her in-laws. It is further argued that on 1st October, 2014 one day prior to the incident, her brother Naveen and his wife met the deceased Konica at her office where she informed them about the harassment by the husband and others and apprehension of threat to her life and stated that she would commit suicide because of their cruelty. Under these circumstances, the learned APP for the State argued that, the deceased was living in a disturbed married life and in view of the gravity and nature of the offence coupled with the fact that the

material witnesses are yet to be examined, the bail application should be rejected. It is stated that the earlier bail application was dismissed by the Addl. Sessions Judge, Patiala House Courts, in the matter.

6. Learned counsel for the petitioner argued that whatever the arguments are addressed by the learned APP for the State about the cruelty and harassment, mostly are based only upon the statements made by the family members recorded under Section 161 Cr.P.C. There are many contradictions with the complaint filed by the father. The same cannot be relied upon at the stage of considering the bail application. He further submitted that during the investigation, the statements of the neighbours, namely, Smt.Babita Bhargawa and Veena Bansal were also recorded and no incriminating evidence came out from their statements against the petitioner. Only in the supplementary statements which were recorded during the investigation, the said allegations are made which are contrary in nature with each other and the same evidently would show that the petitioner along with his family members are falsely implicated in the present FIR. He submitted that no written complaint by the deceased or SMS of any nature to her family members has come during the investigation to establish that the present case is a case of cruelty, harassment and demand of dowry.

7. Counsel has argued that the petitioner is working as Assistant General Manager in Reserve Bank of India and the deceased was posted as a Manager in Punjab National Bank. The husband and wife were blessed with a baby boy on 29th July, 2013 whose first birthday was celebrated with a great pomp and show at RBI

Community Centre, Vasant Vihar. He further submitted that the statements of the colleagues of the deceased, namely, Vipin Goirala, Vineet Gill, Smt.Manisha, Smt.Sheela Jain and Rekha Bhatnagar were also recorded during the investigation who categorically stated in their statements that the deceased always looked happy. She was of very joyful nature and she never expressed any grief/problem about her matrimonial life. The witness, namely, Vineet Gill in his statement stated that even before the day of unfortunate incident, i.e. 1st October, 2014, the deceased came to the office; she worked till 6 p.m. and thereafter left the office. It was also stated by the said witness that he did not feel any problem from her side which evidently shows that she was not tensed or disturbed due to any matrimonial problem.

8. Learned counsel for the petitioner has also argued that it is wrong to draw a presumption that within two and a half years of marriage, the deceased committed suicide because of the harassment at the hands of the petitioner. It is wrongly presumed by the respondent that the demand was raised soon before the incident which is contrary to the contents of the charge-sheet, as no evidence came on record during the investigation which would show that soon before her death, there was any demand either from the petitioner-side or from his family members. If the deceased was subjected to cruelty in respect of dowry demand soon before her death, there must be previous complaints in respect of the same. But no such complaint has been filed on record by the IO.

9. Even if the petitioner was not allowing his wife to meet her parents on regular basis, it does not mean that he is guilty of cruelty or harassment. She had been visiting her parents' house for many occasions. She was a working lady and she also had to take care of her small son. The petitioner had never abetted her to commit suicide. Small altercations in the family of this type usually happen and his client never thought that she would commit suicide for very small issues. The purpose of suicide is unknown to him and his family members. The deceased was not subject to cruelty or harassment particularly in relation to the demand of dowry.

10. In view of the above said facts and circumstances, it is only to be considered at this stage whether the petitioner is entitled for regular bail during the pendency of the proceedings.

11. The Supreme Court in ***Kans Raj v. State of Punjab & Ors.***, AIR 2000 Supreme Court 2324 has held that "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straight jacket formula can be laid down by fixing any time limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing

the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be “soon before death” if any other intervening circumstance showing the non existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.

It has further been held that no presumption under Section 113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty, and harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the woman. The reliance placed by the learned counsel for the respondents on ***Sham Lal v. State of Haryana***, 1997 (9) SCC 759 is of no help to them, as in that case the evidence was brought on record to show that attempt had been made to patch up

between the two sides for which Panchayat was held in which it was resolved that the deceased would go back to the nuptial home pursuant to which she was taken by the husband to his house. Such a Panchayat was shown to have held about 10 to 15 days prior to the occurrence of the case. There was nothing on record to show that the deceased was either treated with cruelty or harassed with the demand of dowry during the period between her having taken to the nuptial home and her tragic end. Such is not the position in the instant case as the continuous harassment to the deceased is never shown to have settled or resolved.

12. 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 her in-laws' house, whatever be the cause of death, the parents of the deceased want the in-laws to be hanged. This Court observed how 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.

13. 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.

14. As far as the merit of the case is concerned, this Court does not wish to express any opinion. At present, the Court is to consider as to whether the petitioner is entitled for bail or not in view of the facts and circumstances of the present case.

15. During the investigation, the statements of the family members of the deceased were recorded under Section 161 Cr.P.C. The statement of Ms.Rashmi Kujur servant/maid was also recorded before the Court of Metropolitan Magistrate, Patiala House Courts, under Section 164 Cr.P.C., in which she has made the following statement:-

“MAIN 26th January, 2014 SE NITIN BHAIYA KE GHAR R.K.PURAM ME BACHE KI DEKHBHAL KA KAAM KARTI HUN. DINANK 02.10.2014 KO BHABHI KONICA SABSE PAHLE UTHI THI. US DIN NAVRATRON KA AKHIRI DIN THA. BHABHI NE KHANA BANAYA AUR KANYAON KO KHILANE KI TAYARI KI. BHAIYA UTHKAR MANDIR GAYE AUR KARIB 6 BAJE AAYE. PHIR SAB LOGON NE PUJA KI. BHABHI NE NASHTA KARTE SAMAY MUJHSE PANI MANGA AUR MAINE PANI DIYA. PAR BHABHI PARESHAN THI AUR PANI PEEKAR PANI KA GILAS JOR SE TABLE PAR MARA AUR APNE KAMRE ME CHALI GAYI. BHAIYA KE BULANE PAR BHI NAHI AAYI. KAMRE KO ANDAR SE BANK KAR LIYA. JAB KANYAYEN AAYI TO HAMNE BHABHI KO DARWAJA KHOLNE KO KAHA PAR BHABHI NE NAHI KHOLA. PHIR BHAIYA NE BALKANI SE JAALI KI TARAF KA DARWAJA KHOLA TO DEKHA KI BHABHI CHUNNI MEIN PANKHE SE LATKI HUI THI. PHIR HAMNE UNHE UTARA. BHAIYA BHABHI KE PER

PAKAD KAR BAHUT RO RAHE THEY. PHIR BHAIYA BHABHI KO HOSPITAL LE GAYE.”

16. In the charge-sheet, it is mentioned that the information was also collected from the Punjab National Bank, Bhikaji Cama Place, New Delhi where the deceased Konica used to work. It was informed that Smt.Konica (deceased) had joined as Manager Credit in the month of January, 2014. She was working with the following persons in the Credit Department – Smt.Shaila Jain, Sr. Manager Credit, Sri Vinit Gill, Manager Credit and Sh. Vipin Goirala, SWO. She usually used to take lunch with Sr. Manager, Credit, Smt.Shaila Jain and was posted at Mid Corporate Branch, PNB Noida prior to this office. Sh.M.N.Parmar – AGM, V.V.Sonkar – Chief Manager, Smt.Shaila Jain – Sr. Manager Credit, Sh. Vinit Gill – Manager Credit, Sh. Vipin Goirala – SWO, Smt. Manisha – SWOA and Ms.Rekha Bhatnagar – SWOB were enquired regarding discussion of deceased Konica with them about home problem etc., and they stated that Konica never talked any problems related to her matrimonial dispute/harassment from her husband and her in-laws.

17. During the course of the investigation, it came to light that the petitioner Nitin had purchased a plot at Yamuna Express Way; pertaining documents to this effect were collected and placed on the case file. In the charge-sheet, it is mentioned that further enquiry was conducted from RBI where it was informed that the petitioner was sanctioned housing loan of Rs.30 lac by the Reserve Bank of India in July, 2013 for acquiring a built-up house No.A-29, at Sector XU-II, Greater Noida, U.P., at an approximate cost of Rs.43 lac. The source

of funds declared by him for acquiring the above property were as under:-

(a) Housing Loan from RBI: Rs.30,00,000/-

(b) Loan from RBI Employees' Coop. Credit Society, Hyderabad: Rs.9,00,000/-

(c) Interest free loan from Sister: Rs.4,00,000/-

Total: Rs.43,00,000/-.

On perusal of salary slip of the petitioner, it revealed that the total amount of Rs.28,432/- (13,000 + 15,432) has been deducted from his salary towards loan taken by him in respect of the above said property purchased by him. The account statement of bank account of the deceased Konica was also collected from Punjab National Bank. On perusal of the same, no considerable transaction from the account of deceased Konica in the account of the petitioner Nitin and her in-laws came on record.

18. In view of the above circumstances, only a *prima-facie* view is to be taken. The law of bail during the trial period is quite settled. The Supreme Court in the case of **Sanjay Chandra v. Central Bureau of Investigation**, (2012) 1 Supreme Court Cases 40 in paras 22, 23 & 40 after recording the facts and law has held as under:-

“22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any

person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

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40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.”

19. In the very recent case, the Supreme Court in the case of ***Dr. Vinod Bhandari v. State of M.P.***, JT 2015 (1) SC 600, in para 12 it was observed as under:-

“12. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The

detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. Reference may be made to decisions of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan* (2005)2 SCC 42, *State of U.P. v. Amarmani Tripathi* (2005)8 SCC 21, *State of Kerala v. Raneef* (2011)1 SCC 784 and *Sanjay Chandra v. CBI* (2012) 1 SCC 40.”

20. It is an admitted position that the charge-sheet has already been filed. Most of the witnesses are family members, doctors and Government witnesses. There is hardly any chance by the petitioner to approach or tamper with the evidence. There is also no chance that the petitioner will flee away from the trial in the matter, as the petitioner is working as Assistant General Manager in Reserve Bank of India.

21. It is also not denied by the learned APP for the State that the petitioner has not withdrawn any amount from the bank account of the deceased Konica in relation to the purchase of plot at Yamuna Express Way, rather it appears from the charge-sheet that the petitioner has taken the loan from RBI Employees’ Coop. Credit Society, Hyderabad for the said purpose. It is also an admitted position that the petitioner himself has taken the deceased to the hospital. He does not have any previous criminal antecedents. There is no material on record to show that the petitioner will misuse the liberty to be granted to him to subvert the justice.

22. Considering the overall facts and circumstances of the case and without expressing any opinion on merits, I am inclined to grant the bail to the petitioner in view of circumstances referred above. Hence, the prayer of this application is allowed. It is directed that the petitioner be released on bail, subject to the following conditions:-

- (i) Petitioner shall furnish a personal bond in the sum of Rs.20,000/- with one surety of the like amount to the satisfaction of the learned Trial Court.
- (ii) He shall appear before the learned Trial Court where the matter is fixed and shall not dispute his identity.
- (iii) He shall surrender his passport before the learned Trial Court, if already not deposited and shall not leave the country without the prior permission of the Court.

23. The application is accordingly disposed of.

24. Dasti under the signatures of the Court Master.

(MANMOHAN SINGH)
JUDGE

APRIL 06, 2015