

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

% *Judgment pronounced on: 27th May, 2015*

+ **BAIL APPLN. No.608/2015**

SARLA DEVI Petitioner

Through Mr.Rohit Kaliyar, Adv. with
Mr.Karan Sharma & Mr.Lovender
Choudhary, Advs.

versus

STATE OF NCT OF DELHI Respondent

Through Mr.M.N.Dudeja, APP for the State
along with Insp. Rajesh Kumar
Mishra, SHO, PS Pulprahladpur &
SI Narasi Prasad, in person.
Mr.Rajpal Kasana, Adv. for the
complainant.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No. 65/2015 under Section 498-A/304-B/34 IPC registered at P.S. Pul Prahladpur.
2. The case of prosecution is that i) a PCR call was received at the Police Station vide DD No. 35 A at 9.20 pm that a lady had hanged herself at D-550, Pul Prahladpur. ii) on receipt of information, it came to notice that the incident had occurred at D-365 and not D-550. On this the I.O. reached the spot i.e 3rd floor, D-365, Pul Prahlad

Pur, where a lady named Poonam w/o Chagan Singh was found lying dead on the floor. The husband of the deceased Sh. Chagan Singh and others were found present at the spot who informed that Poonam was his wife and that they had love marriage two years ago. iii) On that day he had gone for his work at his office/factory at Okhla and when he came back he found that the room was bolted from inside and when he called Poonam to open the door she didn't respond. On this he checked from the open space of the kitchen and found that Poonam was hanging from the fan with the help of a Chunni. He immediately went inside and shouted for help. On this Ms. Geeta, sister of the tenant living on the second floor came upstairs and they both opened the knot of chunni from the neck of Poonam and found that she was dead. iv) Thereafter, the Executive Magistrate was called who subsequently called the father and the brother of the deceased and recorded their statements on the next day. They alleged that Chagan Singh and her sister Poonam had a love marriage in December, 2012 but they did not inform them. They came to know about this marriage in February, 2013 and subsequently they sent Poonam along with Chagan Singh. However just after 15-20 days, the mother of Chagan Singh used to come near to his house and utter abusive language and taunt them for not giving proper dowry to Poonam. On 9th August 2013 they had a fight and cross cases were registered. Chagan and Poonam had one baby boy out of their wedlock, but none of them went to their house at that time also. However the cross cases registered were withdrawn on 16th December, 2014 after mutual consent. In the meantime whenever he

asked his sister she said that she is OK. However about 2 months back when he called his sister Poonam, he felt that she didn't seem ok. He suspected that Poonam was killed by Chagan Singh and his mother/petitioner. v) The parents and brother of the deceased submitted that they used to taunt them for less dowry and since they had not given any dowry to Poonam they killed her and she did not commit suicide. During investigation the neighbours/public persons were interrogated when (i) Mahilal s/o Sh. Bhikam Singh (ii) Kamal Singh s/o Ram Charan, (iii) Bhishamber Singh s/o Khayali Ram and (iv) Ram Nageena came forward and deposed about the whole matter and they supported the allegation of the complainant. They said that the accused used to meet them and discuss her grievances about not taking enough dowry by the deceased.

3. The case of the petitioner is that a) after the marriage with son of the petitioner the deceased herself had submitted a handwritten complaint to the police mentioning therein that her family members were harassing her. Moreover, the marriage between the deceased and her husband (son of the petitioner) was performed secretly without the knowledge and consent of respective family members being it purely love marriage. As per the contents of the FIR the complainant and his family members got knowledge of the said marriage in February, 2012, whereas, the said marriage was performed on 13th December, 2012 at Arya Samaj Mandir. The factum, of giving birth to male child on 1st March, 2014 further showed that the relation between the deceased and her husband

were cordial and there was no demand of dowry or harassment from the side of the petitioner or her son.

b) As per the content of the FIR the deceased had not disclosed the factum of her marriage with the son of the petitioner till February, 2013. Therefore, the question of raising demand of dowry in such a marriage does not arise. Thus, all the allegations levelled against the petitioner and her son are false and concocted.

c) As per contents of the FIR the family members of the deceased had not even visited the in-laws house of the deceased when she gave birth to a male child on 1st March, 2014 meaning thereby the family members of the deceased were not on visiting terms, thus the allegation levelled by the complainant in the FIR regarding having talks with the deceased is false and frivolous.

d) The contents of the FIR nowhere showed that there was any demand of dowry soon before her death. Therefore, the main ingredient of Section-304-B IPC is missing in the present case.

e) The contents of the FIR further showed that on 9th August, 2013 some incident had taken place in which the son of the petitioner had sustained injuries and the FIR No.289/2013, under Section 323/341/34 IPC was registered regarding the said incident at P.S. Pul Prahladpur.

f) The deceased had committed suicide due to the harassment, torture and ill behavior caused by her family members and the petitioner and her son are not responsible for aiding or abetting the deceased for committing suicide as alleged.

4. 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 respondent 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 parental 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.

5. 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.

6. In ***Hari Gopal Wadhwa v. State***, (2007) 143 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.

7. As per the status report, the petitioner is absconding and evading her arrest. Non-bailable warrants were issued by the Trial Court on 17th March, 2015 and when she still evaded her arrest, necessary steps were taken by the prosecution for passing the final order in the proceedings under Section 82 Cr.P.C. and the matter in this respect is listed for 30th May, 2015.

8. Learned counsel for the petitioner has informed the Court that in the month of February, 2015, the bail application was filed before the trial Court which was rejected and the proceedings were taken by the prosecution to pass the final order under Section 82 Cr.P.C. after filing the present petition, as the same has been filed in the last week

of March, 2015. He submits that no order has been passed for declaring the petitioner as proclaimed offender by the trial Court. Therefore, the case referred by the prosecution in the case of **Lavesh v. State (NCT of Delhi)**, (2012) 8 SCC 730 has no application in the present case in view of the different facts.

9. It appears from the arguments of the prosecution that the police was making the efforts to arrest the petitioner but she was evading her arrest, but the fact of the matter is that she has not been declared as proclaimed offender. In case she would have been declared as proclaimed offender in terms of Section 82 Cr.P.C., I would agree with the learned APP for the State that the petitioner would not be entitled for bail and she had to surrender before the trial court. In the present case, the matter is listed before trial court on 30th May, 2015 for passing the final orders for that purpose.

10. Another important factor in the present case is that the deceased Poonam had also made the complaint to the SHO concerned whereby she informed the police that she had been receiving threats from the parental home to cause harm to her husband. Further, few months earlier when she committed suicide, there were cross FIRs between the parties and many statements were recorded by the police and ultimately, the matter was resolved. Nowhere in the said cross FIRs or the statements made on behalf of the complainant, it was pointed out that there was any demand of dowry or threat to the life of the deceased. Learned counsel for the petitioner states that even otherwise, there is no material on record to

show that the deceased before her death informed the family about the demand of dowry or threat to her life.

11. The husband of the deceased is already in custody. He and his deceased wife had a small child of the age of 1 year and 2 months. The brother of the husband has his own family including 6 months' child and therefore, it would be appropriate that the child has to be taken care of by some female member in the family. This is one of the reasons for granting the bail to the petitioner, who is widow and there is no other female member to look after the small child.

Frankly speaking, normally this Court would not have granted the relief in these types of matters, however, in the above mentioned circumstances the prayer of the same is allowed without expressing any opinion on merit.

12. Under these circumstances, I am inclined to grant the relief of anticipatory bail to the petitioner. Thus, it is directed that in the event of her arrest, the petitioner shall be released on bail subject to her furnishing a personal bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the Investigating Officer (IO) and further subject to the following conditions:-

- (a) that she will join the investigation and shall appear as and when directed by the IO and continue to cooperate in the investigation;
- (b) that she will furnish her present address and contact number to the IO and will not shift from the said address or change the contact number, without prior permission of the IO;
- (c) that she will surrender her passport to the IO and will not leave the country without permission of the Court.

13. In case of violation of any of the conditions above, it will be open to the State to apply for cancellation of the bail.
14. The petition is accordingly disposed of.
15. Dasti under the signatures of Court Master.

(MANMOHAN SINGH)
JUDGE

MAY 27, 2015