

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

% Order delivered on: 5th March, 2015

+ **BAIL APPLN. 2726/2014**

GEETA Petitioner
Through Mr.Sandeep Sethi, Sr. Adv.
Mr.S.P.Kaushal, Mr.P.S.Bindra,
Mr.Amit Anand & Mr.Rohit Kumar,
Advs.

versus

STATE (GOVT OF NCT OF DELHI) Respondent
Through Mr.Ravi Nayak, APP for the State
along with SI Ram Bhool Singh,
PS Fatehpur Beri, in person.
Mr.D.S. Tomar, Adv. with
Mr.Manish Kumar & Mr.Vivek
Kumar, Advs. for complainant.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present application has been filed by the mother-in-law of the deceased under Section 439 Cr.P.C. in case FIR No.115/2013 under Sections 498A/304-B/34 IPC, Police Station Fatehpur Beri.
2. The petitioner is a woman. She is in custody since 24th May, 2013. Her case is that she has been falsely implicated in the above said FIR. She submits that she is a law abiding citizen and permanent resident of Delhi and has absolutely clean antecedents. She belongs to a good family. She has a long root in the society.

Earlier she has not misused the liberty granted by the Court. Earlier application moved by her under Section 439 Cr.P.C. was dismissed by this Court by order dated 27th May, 2014 on the reason that the material witness had not been examined.

3. It is submitted by Mr.Sandeep Sethi, learned senior counsel appearing on behalf of the petitioner, that after examination of all the independent witnesses from the family of the deceased the bail application moved by the petitioner has been dismissed by the trial court on 3rd December, 2014. Therefore, the present application has been filed before this Court.

4. Mr.Sethi states that the petitioner has almost spent more than one year and eight months and since the trial will take some time, no purpose would be served if she will remain in judicial custody. He submits that the deceased stayed at her parental home for a period of about 278 days out of a total period of about 458 days of wedded life. No family member of the deceased raised this issue through the common relatives of both the parties.

5. He submits that admittedly the families of the deceased and the petitioner were closely known to each other for the past over 25 years and were well aware of the financial status and other background of each other.

6. Mr.Sethi has also referred the statement of witnesses of family members of deceased as well as other documents and has relied upon para 12 of the bail application wherein it is mentioned that the

complainant and his family members have given various reasons for deceased committing suicide; i) the son of applicant was having illicit relations, ii) the son of the applicant had married another girl, iii) the son of the applicant did not obey the orders of the deceased, iv) the domestic help had shunted out and the deceased was made to work, v) the son of the applicant was not having physical relationship with the deceased, vi) the deceased was in deep depression, vii) demands of dowry were made and viii) she was killed and hanged by the applicant and her son.

7. He also submits that the petitioner is not keeping well and there is no likelihood of any tampering with the evidence in any manner as all the family members of the deceased have already been examined. An undertaking has been given on her behalf that she will not flee from the justice and she undertakes not to leave the country without the permission of the Court.

8. Mr.Sethi in support of his submissions has also referred to the cross-examination of PW-1 Karan Singh recorded on 30th June, 2014, who is father of the deceased, wherein he admitted that his family and the family of the petitioner were visiting each other before and after the marriage of his daughter. PW-1 also admitted that it is correct that he and husband of the petitioner had gone together for holidays at Kashmir and Rajasthan and stayed together after the marriage of deceased with Vikas. He further referred the cross-examination of PW-1 Karan Singh recorded on 28th July, 2014 wherein PW-1 father of the deceased has admitted that there was

Dr.Ambedkar Jayanti procession on 14th April, 2013. The said procession had passed through Sultan Pur where the accused persons resided and when the procession reached Sultan Pur he had telephoned the husband of the petitioner i.e. father of Vikas to make arrangement of tea as the procession was near Sultar Pur. He submits that the said circumstances would indicate that the parties had cordial relations till 13th April, 2013 as the father of the deceased had requested the husband of the petitioner to make arrangement of snacks and tea for the said procession. He says if there was a demand on behalf of the accused, from the day of marriage, the father of the deceased would not have shown his such conduct. The date of incident is 15th May, 2013.

Mr.Sethi, learned senior counsel appearing on behalf of the petitioner, has also made one of the submissions that family members of the petitioner have a huge business of more than Rs.100 crores having many malls in South Delhi, why the petitioner and her family members would harass the deceased and her family members for dowry. In fact the complainant was fully aware about his financial condition and status of the petitioner and her other family members.

9. On the other hand, the case of the prosecution is that it is a fit case where the petitioner and deceased's husband are liable to be convicted under Sections 304B and 498A IPC. Learned counsel has argued that all the witnesses of family members as well as other public witnesses have deposed about the death of the deceased on account of dowry demand. In support of his submissions, he has

referred two decisions of this Court in the case of ***Bhateri Devi and Anr. vs. State of Delhi***, being CrI.A. 223/2013, decided on 19th July, 2013 and ***Sudhakar Singh vs. State***, being CrI. A. No.240/1998, decided on 18th July, 2014. Learned APP for the State argues that if there is a malafide on behalf of the complainant he would have made the complaint involving other family members also. He also argues that all the ingredients of Section 304B are satisfied. Thus, the application is liable to be rejected.

10. The said decisions are passed on merit of the case. As far as grant of bail at pre-conviction stage is concerned, no doubt it is settled law that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon.

11. 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 & 45 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.

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45. In *Bihar Fodder Scam (Laloo Prasad v. State of Jharkhand, (2002) 9 SCC 372)* this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.”

12. In the very recent case decided by the Supreme Court in the case of ***Dr.Vinod Bhandari v. State of M.P.***, 2015 SCC OnLine SC 96, 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.”

13. Admittedly, the petitioner is in judicial custody since 24th May, 2013. She is the mother-in-law of the deceased. The family members of the deceased have already been examined in Court. Earlier she has not misused the liberty. There is no likelihood of her tampering with the evidence in any manner. It has also come on record that family members of the deceased and the petitioner and her family were known to each other for the last 25 years and they were also aware about their financial status. As per the counsel for the petitioner, the petitioner is not keeping well in judicial custody. Mr.Sethi states that the accused have no objection if the trial in the

matter be expedited and they will not take unnecessary adjournments.

14. Though it is not of much concern with regard to the merit of the case, however, in order to show bonafide and without prejudice, the petitioner has also paid Rs.40 lac to the complainant by way of bank draft towards the dowry articles as per allegation by the complainant who accepted the same without prejudice as according to him that dowry worth about Rs.2-3 crores was given to the petitioner and her family at the time of marriage.

15. Considering the overall facts and circumstances of the case and without expressing any opinion on merits, under the peculiar circumstances coupled with the reason that she is an old lady and is not keeping well, 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.2 lac with two sureties each of the like amount to the satisfaction of the Trial Court.
- (ii) She would not dispute her identity as an accused.
- (iii) She shall surrender her passport before the Trial Court if already not deposited and shall not leave the country without the permission of the Court.
- (iv) As agreed the trial in the matter is expedited and accused in the

matter shall not take unnecessary adjournments.

- (v) The petitioner shall also deposit further a sum of Rs.20,00,000/- in the form of FDR in the name of the trial court as part of the dowry amount allegedly paid by the complainant, subject to final outcome of the matter within two weeks from the date of her release.

16. The application is disposed of.

17. *Dasti*, under the signatures of the Court Master.

(MANMOHAN SINGH)
JUDGE

MARCH 05, 2015