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

Judgment delivered on: 1st July, 2015

+ BAIL APPLN. 999/2015

HIMANSHU DEV

..... Petitioner

Represented by: Mr. Vikas Arora and Mr.
Dheeraj Manchanda, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Ms. Jasbir Kaur, APP for
State.

Mr.S.K. Sharma, Adv. for complainant.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present petition has been filed under Section 438 Cr.P.C. for granting anticipatory bail in favour of the petitioner in case FIR no. 246/2015, registered at PS-Mansarovar Park for the offences punishable under Sections 306/498A/34 IPC.

2. The case of the prosecution is that on 28.04.2015, a PCR call vide DD No. 6A regarding hanging of woman was received at the aforesaid Police Station. During enquiry, it was found that one woman, namely Taruna was found dead at her matrimonial home, i.e., House No. 3075, Dakkhana Gali, Ram Nagar, Shahdra, Delhi. The father of the deceased made a complaint alleging therein that

on 21.01.2006, marriage of this daughter Taruna was solemnized with Vipin Dev Sharma according to the Hindu rites and he had given gifts and dowry beyond his capacity. But the husband and the in-laws of his daughter were not satisfied. After some days of marriage, the husband and in-laws of his daughter started torturing and pressurizing her physically and mentally and demanding dowry for a sum of Rs.5 Lac. When his daughter told them that her family members are not in a position to fulfil the said demand, then her husband and in-laws started abusing and beat her and regularly demanding the above-mentioned dowry.

3. The father of the deceased further alleged that 25 days prior to the death of her daughter, she visited his house and said that her mother-in-law, father-in-law and devar Himanshu Dev (petitioner herein) had sent her for bringing Rs. 5 Lac for marriage of Himanshu. When the said demand was not materialized, the in-laws of the deceased killed her. She could not have committed suicide, but have been murdered by her in-laws.

4. Ld. Counsel appearing on behalf of the petitioner submits that there was no demand from the in-laws side, specially from the petitioner. The parents of the deceased participated in the marriage of the petitioner Himanshu, which was solemnized on 21.04.2015. All were happy in the marriage as is evident from the photographs, which are placed at Page 89 onwards of the paper book.

5. Ld. Counsel submits that the incident took place on 28.04.2015 in the midnight and the information regarding her hanging was given to her parents and to the police as well by the in-laws. Though, the father of the deceased had made allegations of murdering his daughter, however, finding no evidence, the police did not register a case under Section 302 IPC, but registered a case under Section 306/498AIPC. Moreover, in post-mortem report, cause of death is asphyxia as a result of ante-mortem hanging. If that is a murder of the deceased, then some injury would have come on her body, which is absent as is evident in the post-mortem report.

6. Ld. Counsel further submits that before the incident, there was no complaint from the deceased on record, through SMS and not even a single complaint is lodged to any police station. Therefore, the allegations made after the death of the deceased are false.

7. The issue of demanding an amount of Rs.5 Lac also does not inspire confidence for the reason that the family of the petitioner is well-off. The husband of the deceased had booked a three bedroom Flat in Rising Real Estate Pvt. Ltd. on 12.05.2014 in the name of the deceased. Before the marriage of the petitioner, the husband of the deceased purchased Jewellery worth Rs.2,10,000/- in the name of deceased. Moreover, the deceased was maintaining three bank accounts, i.e., one in Oriental Bank of Commerce in which the balance as on 26.07.2014 was Rs.1,12,569.92/-. In the second bank

account maintained in Bank of Baroda the balance as on 28.03.2015 was Rs.91,735/- and in the third account maintained in Bank of Baroda, Shahdra Brach, the balance as on 29.12.2014 was Rs.30,000/-. In addition to that, she was maintaining PPF account and two FDRs of Rs.1 Lac each including insurance policy.

8. Ld. Counsel submits that no doubt it is great loss to the petitioner's family as the two minor children have lost their mother. However, the cause of death is not known and the same is pending for investigation.

9. As the petitioner is concerned, there is no demand from his side. Moreover, there was no question of any demand as the family of the petitioner is in a better financial condition. However, the main allegations are of committing atrocities on the demand of Rs.5 Lac for the marriage of the petitioner.

10. On the other hand, ld. Counsel appearing on behalf of the complainant submits that if the deceased was happy, why she committed the suicide. It is a sheer case of murder. The police have not investigated the case properly. The in-laws including the petitioner were torturing the deceased and demanded an amount of Rs.5 Lac for the marriage of the petitioner. When she could not meet the said demand, they killed her. However, the police has converted the offences under Sections 306/498A/34 IPC only.

11. To strengthen his arguments, ld. Counsel has relied upon a case of ***Patel Maheshbhai Ranchhodbhai & Ors. v. State of***

Gujarat 2015 (1) JCC 646, wherein the Hon'ble Supreme Court held as under:

13. After hearing learned Counsel for the parties and perusing the papers including the impugned order, we are in conformity with the opinion and conclusion of the Division Bench of the High Court. The courts are expected to perform its duties and functions effectively and true to the spirit with which the courts are sacredly entrusted with the dignity and authority and an alert judge actively participating in court proceedings with a firm grip on oars enables the trial smoothly to reach at truth. In the present case, the trial court has failed to perform its duties to reach to the real truth and to convict the accused. As observed by the High Court, we are also at pain to notice that the role of prosecuting agency during the trial along with the trial judge appears to be dubious. Besides dying declaration, there was available evidence on record to prove the factum of cruelty and death of Renukaben, but it was not brought on record by the prosecuting agency. Instead, all concerned were in hurry to finish the case in a day. Prosecution submitted a list of 17 documents to be produced and exhibited, but the trial Judge exhibited only four documents and prosecution also did not raise any objection.

12. Ld. Counsel further relied upon a case of **Salauddin Abdulsamad Shaikh v. State of Maharashtra AIR 1996 SC 1042** wherein the Hon'ble Supreme Court held as under:

“Anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the Court granting anticipatory bail should leave it to the regular Court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted. An order of anticipatory bail could even be obtained in cases of serious nature as for example murder and, therefore, it is essential that the duration of that order should be limited and ordinarily the Court granting anticipatory bail should not substitute itself for the original Court which is expected to deal with the offence. It is that Court which has then to consider whether, having regard to the material placed before it, the accused person is entitled to bail.”

13. It is important to note that vide order dated 29.05.2015, Coordinate Bench of this Court granted anticipatory bail to the petitioner till today.

14. The Bank account maintained by the deceased are not new, but old one. Before the marriage of the petitioner, husband of the deceased had purchased jewellery in her name. In the month of May, 2014 a three bedroom flat as noted above was booked in the name of deceased. The parents of the deceased participated in the marriage of the petitioner. As per the photographs, the rituals were performed by the deceased Taruna as is evident from Pages 89 and

90 of the paper book. There was no complaint whatsoever before the present incident.

15. I note, Ms. Manisha, sister-in-law (Nanad) of the deceased has already been released on anticipatory bail by the Id. Trial Court vide order dated 18.05.2015. The cases cited by the counsel for the complainant are not relevant in the facts and circumstances of this case.

16. In view of above, without commenting on the merits of the case, I am of the considered view, the petitioner is entitled for bail.

17. Accordingly, the petition is allowed.

18. Consequently, the petitioner shall be released on anticipatory bail in the event of arrest in terms of order dated 29.05.2015 passed by this Court.

19. I hereby make it clear the trial court shall not be influenced by the observations made by this Court while dealing with the bail applications of the co-accused, if any, and that shall be decided on merits.

20. A copy of this order be given *dasti* under the Signatures of the Court Maser.

SURESH KAIT, J

JULY 01, 2015

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