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

Judgment delivered on: 9th October, 2015

+ **BAIL APPLN. 2161/2015**

SHIVENDRA TYAGI Petitioner

Represented by: Mr. Anupam S Sharma and
Ms.Parul Rohatagi, Advs.

versus

STATE OF DELHI Respondent

Represented by: Ms.Meenakshi Chauhan,
APP State with SI Vijay
Mann, PS Burari, Delhi.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A. No.14939/2015(for delay in re-filing)

In view of the averments made in the application, the delay of 18 days in re-filing the instant petition is condoned.

Accordingly, the application is allowed.

Crl. M.A. No.14938/2015 (Exemption)

Exemption allowed, subject to all just exceptions.

Accordingly, the application is allowed.

BAIL APPLN. 2161/2015

1. Vide the present petition under Section 439 Cr P C, petitioner seeks a direction for releasing him on bail in case FIR No.2/2012 registered at Police Station Burari, Delhi for the offences punishable under Section 498A/304B/34 of the IPC.

2. The petitioner is husband of deceased Poonam Tyagi and

allegations against him that on 01.01.2012, complainant Mewa Ram, father-in-law of petitioner got recoded his statement to the SDM – Civil Lines, Delhi wherein he alleged that his daughter Poonam Tyagi (since deceased) was married to petitioner - Shivendra Tyagi on 29.04.2009. No demand of dowry was made by the groom side, but all the necessary household articles including the jewellery and motorcycle were allegedly given in the marriage. After the marriage, there used to be normal quarrels in the family between the deceased and her *jethani* - Laxmi as well as *nanand* – Kavita. The petitioner allegedly used to beat the deceased when quarrel took place between them. On 01.01.2012, the complainant was informed that his daughter had fallen from the roof while spreading the cloths. The deceased succumbed to the injuries. Accordingly, complainant Mewa Ram made complaint, which culminated into the aforementioned FIR. In the complaint, complainant has suspected that his daughter had been murdered.

3. Learned counsel appearing on behalf of petitioner submits that there is no evidence whatsoever against the petitioner in this case to make out a case under Section 304B of the IPC in as much as when the complainant specifically stated that at the time of marriage there was no demand of dowry. Therefore, there was no occasion to demand dowry after marriage and there was no such harassment at the ends of in-laws. Consequently, there was no occasion for the deceased to commit suicide. However, the deceased died due to accident as noted above.

4. Learned counsel further submitted that father of deceased / complainant PW3 Mewa Ram deposed that marriage of deceased with petitioner had taken place almost three years prior to the incident. There

was no complaint ever made against the petitioner and his family members with regard to the dowry demand or any cruelty. Moreover, PW3 Mewa Ram and PW6 Shakuntala—parents of deceased have admitted during their cross-examinations that the dispute between the parties was with regard to the distribution of the property of father of petitioner between him and his brothers and that deceased used to say that she will commit suicide for said reason.

5. It is also admitted by PW3 and PW6 that there was love and affection between the petitioner and their deceased daughter and even the letters depict the love and affection between the deceased and petitioner.

6. Learned counsel for petitioner submits without prejudice that the deceased had left behind her son namely *Pihu*, now aged 5 years. The child has been rendered destitute as there is no one after the death of deceased—Poonam as father/petitioner is in custody. It has already come in the evidence that the terms of the petitioner with his father and other family members were not cordial as there was dispute between them regarding their share in the property of father of petitioner.

7. In addition to above, co-accused Kavita and Laxmi, the allegations against whom are similar to the petitioner, have already been enlarged on bail. The petitioner is in custody since 03.01.2012, therefore, has already completed more than 3½ years.

8. Learned APP appearing on behalf of the State has strongly opposed the present application and submitted that till date, 12 PWs have been examined out of 23 witnesses and trial is at fag end; all material witnesses have been examined – who have fully supported the prosecution case.

Therefore, keeping in view the seriousness of allegations against petitioner, the present application may not be allowed at this stage.

9. Keeping in view the fact recorded above, the fact cannot be lost sight that there is no previous complaint against the petitioner of any nature, co-accused are already enlarged on bail; petitioner is in custody for more than 3½ years; all material witnesses have already been examined. Therefore, without commenting upon the merits of the case, I am of the view that petitioner is entitled for bail in this case.

10. Accordingly, petitioner shall be released from custody on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of learned Trial Court. It is also directed that in case of any change of address of petitioner or surety, the same shall be communicated to the jail authorities, learned Trial Court as well as IO/SHO concerned.

11. In above terms, instant petition is allowed and disposed of.

12. Before parting with this order it is made clear that the observation made by this Court herein shall have no bearing on the merits of the case of either side pending trial before learned Trial Court.

**SURESH KAIT
(JUDGE)**

OCTOBER 09, 2015

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