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

+ **BAIL APP. 1880/2015 & CrI.M.A. No.13154/2015**

Date of Decision: 11.09.2015

SWATI

..... Petitioner

Through Mr.Piyush Chhabra, Adv. with
Mr.Manjit Singh Ahluwalia, Adv. &
Mr.Priyankar, Adv. & Mr. Arjun,
Adv .

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through Mr.G.M. Farooqui, APP for the State.
Mr.Lakshay Dhamija, Adv. with
Mr.Sahil Gupta, Adv. for
Complainant.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S. TEJI (Oral)

The present bail application under Section 438 of the Code of Criminal Procedure (Cr.P.C.) has been preferred by the petitioner for grant of anticipatory bail.

As per the averments made in the bail application, the first anticipatory bail application filed by the petitioner was dismissed by the learned Special Judge vide order dated 30th July, 2015 as non-maintainable being pre-matured and the second bail application seeking anticipatory bail was filed by the petitioner after registration of FIR No.1209/2015 in which the petitioner was granted interim protection. However, on 3rd September, 2015, the learned Additional Sessions Judge

(ASJ) dismissed the anticipatory bail application of the petitioner.

The facts giving rise to the present application are that the husband of the petitioner namely Mr.Amit, committed suicide on 20th July, 2015. A complaint against the petitioner was lodged by Mr.Ajit, the brother of deceased Mr.Amit, which culminated into registration of FIR No.1209/2015 by Police Station, Vasant Vihar. In the said FIR, the complainant Mr.Ajit, brother of the deceased, has alleged that Ms.Swati-petitioner/wife of the deceased, had abetted and instigated her husband to commit suicide.

As per the complainant, the petitioner was married with the deceased Mr.Amit on 22nd February, 2015. Mr.Amit used to run a mobile shop but his wife Swati used to fight everyday about job and many a times, the mother and sister of Swati had come to their house to quarrel. Swati used to fight everyday with the deceased Amit and used to mentally agonize him. In fact, Swati used to go straight from her work to her paternal home without informing his husband Amit. A week before the incident, with the consent of Swati, the parents of Amit got them arranged a room on rent but despite that, Swati did not stop quarrelling.

It is further stated by the complainant that in the evening of 20th July, 2015, he tried to contact Amit on his mobile, but the mobile phone of Amit was switched off. The complainant stated that when he went to Munirka to check, he found the door of the room locked from inside. The

complainant entered in the room after breaking the window and found his brother Amit hanging. The complainant immediately informed the police and a constable Mr.Ravinder reached on the spot. On inspection by the Crime Team, Mr.Amit was found hanging in half pent and a suicide note was recovered from in his possession which reads as under:

“I Amit am very much troubled by my wife Swati, because of her today, I am living here leaving my God like mother and father and my family. My wife troubles me day and night and tells me that I have affair with someone else but there is no such thing. My mother and father have cried today but what can they do. I am sorry Mummy Papa & my family. I miss u (my wife should be punished by law for this otherwise my soul will not be at peace).”

Learned counsel for the petitioner, on the other hand, submits that a bare reading of the FIR would reveal that there is no abatement on the part of the petitioner and the case of the prosecution does not suggest any instigation or any kind of abetment towards Amit for committing suicide.

It is further submitted that soon after marriage, the in-laws of the petitioner started ill-treating the petitioner for the demand of dowry and thus, the petitioner and the deceased shifted to a separate accommodation. He further submits that there is no *mens rea* on the part of the applicant to drive the deceased to commit suicide. It is also submitted that the petitioner is a pregnant lady and has a Government job which is her only source of income to sustain herself and unborn child in future.

Learned counsel for the petitioner while relying on the judgment of

Kartar Singh : Kripa Shankar Rai v. State of Punjab (1994) 3 SCC 569, submitted that custodial interrogation exposes the suspect to the risk of abuse of his person or dignity as well as distortion or manipulation of his self-incrimination in the crime. He further submitted that mere harassment does not amount to abetment.

Learned counsel for the petitioner further relies on the judgment passed by Supreme Court in ***Sohan Raj Sharma v. State of Haryana 2008 (11) SCC 215*** in which it was observed that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough.

Another judgment relied upon by learned counsel for the petitioner is in the case of ***Hira Lal Jain v. State (2001) Cri LJ 1212*** in which the Delhi High Court observed that a person is said to instigate another when he goads, provokes, incites, urges forward or encourages another to commit a crime. The fact that a suicide note was recovered certainly cannot be said to mean that the petitioner has goaded, provoked, incited, urged or encouraged the deceased to commit suicide.

While summing up arguments, learned counsel for the petitioner submitted that the petitioner deserves to be granted anticipatory bail for the reason of her being pregnant and on the ground that no mens rea could be established on the part of the petitioner.

In reply to the bail application filed by the State, reference has been made to the suicide note wherein role of the petitioner has been specified to prima facie establish active involvement of the petitioner in abetting the commission of suicide by the deceased. It has been submitted that deceased was subjected to harassment at the hands of the petitioner.

I have considered the rival contentions and also gone through the entire records. In *Chandrawati Vs. State of U.P., 1992 Cri LJ 3634*, the Allahabad High Court held as under:

“The overriding considerations in granting bail which are common both in Sections 437(1) and 439(1), Cr.P.C. are the nature and gravity of the circumstances in which the offence has been committed, position and status of the accused with reference to the victim and the witnesses, likelihood of the accused fleeing from justice and tampering with witnesses etc. No list of exhaustive grounds can be set out. Facts differ from case to case. Bail is at the most a matter of procedural privilege and not an accrued right until it is granted. The law is the sentinel of rights of the Society and of the individual. The cause of public justice has to be zealously guarded as the rights of a criminal defendant. Interest of society and also cause of public justice has also to be kept in mind while granting or refusing bail. When the offence is of such nature which affects the vital interest of the society and has adverse effect on the social and family life, in such matters the issue is to be considered with reference to them. One of the considerations which has to be weighed for granting or refusing bail is a nature of the offence and its heinousness.”

In *Prahlad Singh Bhati v. NCT, Delhi (2001) 4 SCC 280*, the

Supreme Court observed as follows:-

“The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not accepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

On a bare perusal of the contents of the suicide note and the statement made by the complainant in the FIR, if read as whole, it appears that from no stretch of imagination, it can be said that the petitioner had not committed abetment. The claim of Ms.Swati, wife of the deceased that at the time of the incident she was at her workplace where she is employed as an LDC at South Campus, Moti Bagh, and on the fateful day, the deceased husband of the petitioner and the petitioner had breakfast together and the

petitioner could not reach the phone of the husband the whole day, does not render any help in the contention of the petitioner.

Ms.Swati being the wife of the deceased, was admittedly residing in the same house with the deceased on the fateful day and, thus, she is expected to have special knowledge and information about the circumstances in which the suicide was committed. Being the prime suspect in the case, the investigation is to be initiated from the accused as she has important role in the investigation of the said case.

It is not necessary in such type of cases to have direct evidence or presence at the spot immediately before or at the time of commission of suicide to form an opinion whether the allegations against the petitioner amounts to instigation or abetment which forced Amit to take the extreme step. In fact the very conduct of the petitioner in filing a pre-matured anticipatory bail application i.e. filing of the said application even before the registration of any complaint or FIR against her clearly establishes the fact that she had an apprehension of arrest in the present case.

I have given my thoughtful consideration to the aforesaid submission made by learned counsel for the parties and also perused the entire material on record and I find that the nature of the allegations against the petitioner are serious as a life has been

lost on inability to bare the harassment and torture at the hands of the petitioner.

More the reason, the police have opposed the anticipatory bail on the ground of the requirement of custodial interrogation of the accused/applicant being a sole suspect for the abetment to commit suicide by the deceased Amit, the husband of the petitioner.

The arguments advanced by the counsel for the petitioner that presently she is pregnant, would not make her eligible for the concession of the anticipatory bail as she is the sole suspect being required for the purposes of custodial interrogation and the person having special knowledge about the circumstances in which the offence was committed.

In the facts and circumstances discussed above, this Court is of the considered opinion that the petitioner is not entitled for the concession of the anticipatory bail. Hence the anticipatory bail application is dismissed.

At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while declining the bail prayer of the petitioner.

Copy of this order be given dasti under the signatures of the
Court Master.

(P.S.TEJI)
JUDGE

SEPTEMBER 11, 2015
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