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

+ **BAIL APPLN. No.1900/2015**

Date of Decision: 11.09.2015

JASWANT SINGH Petitioner
Through Mr.N. Hariharan, Sr. Adv. with
Mr.R.S. Dalal, Adv.

versus

STATE (GNCT OF DELHI) Respondent
Through Mr. Ashish Dutta, APP with Insp.
Sanjay Kumar, PS Najafgarh.
Mr. P.R. Chatterji & Mr. Ricky
Kundra, Advs. for complainant.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S. TEJI, J(Oral)

The present bail application has been filed under Section 438 read with Section 482 of Code of Criminal Procedure, 1908 (Cr.P.C.) for grant of anticipatory bail.

The facts giving rise to the present bail application are that an FIR No. 653/2015 was registered on 11th August 2015 under Sections 498A, 304B and 34, Indian Penal Code, 1860 (IPC) against the in-laws of the deceased on the statement of Sh. Dharam Pal-father of the deceased. As per the FIR in question, it is alleged by the complainant that he got his daughter-Suman, aged 24 years, married as per Hindu rites and

ceremonies, to Ashish, son of Mr.Jaswant Singh, with the consent of both the families. In the marriage, Dharam Pal, the complainant, out of his own choice gave the dowry in the marriage beyond his capacity which included a car. His daughter was a Teacher in a Government School on contractual basis and in the recent past, she got the examination cleared and was appointed as permanent teacher. It is stated that in the beginning of her marriage, complainant's daughter was happy in her matrimonial home but after one or two months, her in-laws started harassing her. The deceased told her father that her husband Ashish was having affair with some other girl and due to which he often harassed her. Complainant's daughter told him that her in-laws had kept her cheque book and ATM card with them and they used her salary and told that they got their son married to her only for her job and salary. On 11th August 2015 at about 5:40 p.m. complainant's son-in-law informed him that Suman, his daughter has hanged herself.

The contention of the counsel of the applicant is that from the bare perusal of the FIR, it is apparent that no specific allegations whatsoever have been levelled against the applicant-Jaswant Singh, herein and in the entire FIR only except vague allegations that the in-laws of the deceased used to harass her for dowry, have been levelled. Moreover, the complainant himself in the FIR has stated that there was no demand of

any dowry from the applicant's side and whatever he had given in dowry to her daughter was out of his own wish.

Learned counsel for the applicant further submits that none of the family members of the applicant had ever, at any point of time, harassed the deceased for dowry rather it was the deceased who had disturbed the tranquillity, peace and atmosphere of the applicant's home. It is stated that the deceased used to chat over the phone to some unknown person for hours after locking herself in the room. On the fateful day, i.e. on 11th August 2015, the deceased came back home from school at around 3:00-3:30 p.m. and at around 5:00 p.m. she went upstairs and did not come down. After twenty five to thirty minutes when the deceased did not come down, the applicant's son went upstairs and found the deceased hanging with the ceiling of the room. It is contended that the applicant and his family took every care of the deceased and during her pregnancy, either the applicant's wife or the son of the applicant used to take the deceased for regular medical check-ups. It is submitted that the deceased committed suicide as she was exposed for having an illicit relationship with her friend's father and the same made her look down.

The applicant moved an application for grant of anticipatory bail before the learned Additional Sessions Judge, Dwarka but his bail application was dismissed. Thus, the present bail application.

I have heard the learned counsel for the parties at length.

Section 438 of the Code of Criminal Procedure, 1908 confers on the High Court and Court of Sessions, the power to grant the anticipatory bail if the applicant has reason to believe that he may be arrested on accusation of having committed a non-bailable offence.

The specific allegations of the father of the deceased are that his daughter had doubts on loyalty of her husband and also that her cheque books and ATM cards were kept in the custody of her in-laws. A week before the date of the incident complainant's younger brother caught his son-in-law with some other girl in Dwarka and for that the complainant's son-in-law had beaten his deceased daughter. The allegation of the complainant is that his daughter has been killed by her in-laws.

The Apex Court observed that it is not compulsory for the High Court to grant anticipatory bail in such matters. In the case of ***Samunder Singh v. State of Rajasthan & Ors. 1987 SCR (1) 979***, it was observed as under:-

"The widespread belief that dowry deaths are even now treated with some casualness at all levels seems to be well grounded. The High Court has granted anticipatory bail in such a matter. We are of the opinion that the High Court should not have exercised its jurisdiction to release the accused on anticipatory bail in disregard of the magnitude and seriousness of the matter. The matter regarding the unnatural death of the daughter-in-law at the house of

her father-in-law was still under investigation and the appropriate course to adopt was to allow the concerned Magistrate to deal with the same on the basis of the material before the Court at the point of time of their arrest in case they were arrested. It was neither prudent nor proper for the High Court to have granted anticipatory bail which order was very likely to occasion prejudice by its very nature and timing. We therefore, consider it essential to sound a serious note of caution for future. The High Court is under no compulsion to exercise its jurisdiction to grant anticipatory bail in a matter of this nature. So far as the present matter is concerned, since it has become infructuous, we do not propose to pass any order. Subject to these observations, the appeal is dismissed."

In *Bal Chand Jain v. State of M.P.* AIR 77 SC 366, the Apex Court has laid down the following proposition with regard to grant of anticipatory bail:

“(i) The power under Section 438 Cr.P.C. is of an extraordinary character and must be exercised sparingly and in exceptional cases only.

(ii) The said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437 Cr.P.C., are implicit therein and must be read into Section 438 as well.

(iii) In addition to the limitations imposed in Section 437, the petitioner must further make out a special case for the exercise of the power to grant anticipatory bail.”

Admittedly, the unnatural death of the daughter of the complainant took place on 11th August 2015 i.e. within a period of seven years from

the date of marriage i.e. 2nd March 2014. Thus, prima facie the present case falls within the bracket of Section 304B Indian Penal Code, 1860.

The Investigating Officer in the case submitted that the applicant-Jaswant Singh is absconding as the police visited the house of accused on 17th August, 2015, 20th August, 2015, 25th August, 2015 & 26th August, 2015 but the same was found to be locked. Also, on 5th September 2015 complainant came to police station and stated that the accused persons of this case maybe hiding in Kalkaji, Delhi that is, the house of applicant's sister. The Investigation Officer went to the said place with the complainant but the applicant was not found there also. The conduct of the applicant in absconding from police itself speaks volumes about his role in the present case. It is thus clearly established from the submissions of the Investigating Officer that the applicant is absconding arrest deliberately despite being Head Constable in Delhi Police.

It is well settled that though widespread misuse of dowry related laws have been noticed and taking cognizance of the alarming situations, the Hon'ble Supreme Court has also cautioned and issued directions that before arresting the accused persons allegedly involved in dowry related cases, the Police should collect materials implicating the accused.

Here, in the present case, the applicant has been named in the FIR by the complainant, who is father of the deceased and he immediately

after the death of her daughter had made specific allegations against the present applicant. The allegations made against the present applicant are serious in nature. Moreover, the deceased has died within seven years of her marriage and the applicant is in a position to tamper the evidence being Head Constable in Delhi Police and more the reason the other accused i.e. mother-in-law & sister-in-law of the deceased are also absconding.

Having considered the case in hand on the touchstone of the aforementioned submissions, I am of the opinion that keeping in view the facts and circumstances of the case, and the gravity and seriousness and nature of the offence, no ground is made out for granting anticipatory bail to the applicant.

Under these circumstances, this Court is of the considered opinion that the applicant does not deserve the concession for grant of anticipatory bail and hence the present application for grant of anticipatory bail is hereby dismissed.

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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