

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

+ **BAIL APPLN. 2157/2015**

Date of Decision : October 20th, 2015

MASROOR AKHTAR @ GUDDU

..... Petitioner

Through: Mr.Mukesh Gupta, Adv.

versus

STATE

..... Respondent

Through: Ms.Manjeet Arya, APP with Insp.
Rajender.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present application has been filed by the petitioner under Section 438 of the Code of Criminal Procedure, 1973 for the grant of anticipatory bail in FIR No.113/2015, Police Station Chandni Mahal, under Sections 302/304-B/498A/34 of the Indian Penal Code.

2. The allegations levelled against the petitioner/accused are that on 24.04.2015, an information was received in the police station vide DD No.50B. On receipt of said information, police reached LNJP Hospital where Ms.Shahin was found under treatment and she was unfit for statement. There were strangulation marks on the neck of the victim. SDM of the area recorded statement of Smt. Tahira

Begum, mother of the victim who stated that her daughter Ms.Shahin used to be harassed and tortured by the accused persons for bringing less dowry and that the husband of her daughter and in-laws tried to murder her daughter on 24.04.2015. On the basis of statement of the complainant, FIR was registered under Section 307/498A/34 IPC.

3. During the course of investigation, Parvez Mirza and Azaz Mirza, husband and brother-in-law of the victim, respectively, were arrested whereas other accused persons absconded. During treatment, the victim expired on 02.05.2015 and penal Section 302 IPC was substituted in place of Section 307 IPC. Thereafter, Section 304-B IPC was also added in the present case.

4. Arguments advanced by the learned counsel for the petitioner and the learned APP for the State were heard.

5. Arguments advanced by the counsel for the petitioner are that the petitioner is the son of aunt of Parvez Mirza, husband of the deceased; he is residing separately in his house and was not at all residing with Parvez Mirza or deceased; the petitioner is a married person having three minor children. He never interfered in the matrimonial life of the deceased. No accusation of any nature has

been alleged against the petitioner. Charge sheet has already been filed against husband-Parvez Mirza and Jeth-Azaz Mirza. Since no evidence has been found against the petitioner, he has been kept in column No.12 in the charge sheet. The petitioner never made any demand of dowry of any kind either from the deceased or any of her relatives. The allegations made are general in nature and non-specific.

6. On the other hand, learned APP for the State opposed the bail application on the ground that the petitioner has not surrendered before the Court and is evading arrest. It is submitted that the custodial interrogation of the petitioner is required as some incriminating evidence is to be collected.

7. In the present case, NBWs were issued against the petitioner and he approached the court of learned ASJ on 22.09.2015. Vide order dated 22.09.2015, the learned ASJ observed that since the NBWs issued against the petitioner/accused already stood cancelled, the accused was granted liberty to move application for bail before the Trial Court. Thereafter, another application was moved by the accused before the Ld. ASJ who disposed of the same vide order

dated 28.09.2015 while granting the accused two days time to approach the higher court if his bail application is dismissed by the Trial Court. The accused approached the Trial Court and moved the bail application. The learned MM observed that since the accused/petitioner was not in custody, there arose a question on the maintainability of the application. Thereafter, the accused moved an application before the learned ASJ for clarification of bail order dated 22.09.2015. It was observed by the learned ASJ that the accused had to surrender before the Trial Court and then his bail application would be considered by the Trial Court.

8. The learned MM vide order dated 01.10.2015 dismissed the bail application of the accused/petitioner while observing that there is bar of section 437(1)(i) of Cr.P.C., but as per order of ld. ASJ, the accused was not sent to JC but was allowed two days time for surrendering for being taken into custody.

9. Thereafter, the accused/petitioner approached this Court for the grant of anticipatory bail. Chapter XXXIII of the Cr.P.C. deals with the provisions as to grant of bail and furnishing of bonds. Section 437 Cr.P.C. deals with the grant of bail by the Trial Courts when the

accused is in custody in any non-bailable offence. In the present case, accused has played hide and seek with the Court. Firstly, he approached the Court of Session for the grant of anticipatory bail. The learned ASJ directed the accused to approach the Trial Court, meaning thereby that he was asked to surrender before the Trial Court and then to move the bail application under Section 437 Cr.P.C. This fact has even been clarified by the learned ASJ in his order dated 01.10.2015. The order of the learned ASJ is clear that the accused/petitioner was directed to surrender first before the Trial Court and then to move the bail application.

10. Instead of surrendering before the Trial Court, the accused/petitioner kept on playing with the Court on one pretext or the other. Firstly, he approached the learned ASJ for the grant of anticipatory bail, then after taking liberty, approached the Trial Court for the grant of bail without surrendering. Then he approached the learned ASJ again seeking clarification and then after having the same, he approached the Trial Court for the grant of bail. After dismissal of his bail application, he approached this Court. The accused cannot be allowed to play with the law in this manner.

11. In view of the above mentioned facts and circumstances, no ground is made out for the grant of anticipatory bail to the accused/petitioner.

12. The application is disposed of accordingly. However, it is made clear that the observations made above shall not affect the merits of the case.

(P.S.TEJI)
JUDGE

OCTOBER 20, 2015
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