

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

Judgment delivered on : December 22, 2015

+ BAIL APPLN. 2706/2015

SHIVANI CHOUDHARY Petitioner

Through: Mr.Jatan Singh, Ms.Sakshi Sachdeva,
Advocates.

versus

STATE Respondent

Through: Mr. G.M. Farooqui, Additional Public
Prosecutor for the State with
Inspector Ghanshyam, Police Station
North Rohini, Delhi.

+ BAIL APPLN. 2710/2015

NIKHIL CHOUDHARY Petitioner

Through: Mr.Jatan Singh, Ms.Sakshi Sachdeva,
Advocates.

versus

STATE Respondent

Through: Mr. G.M. Farooqui, Additional Public
Prosecutor for the State with
Inspector Ghanshyam, Police Station
North Rohini, Delhi.

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

JUDGMENT

P.S.TEJI, J.

1. Aggrieved by the order dated 09.12.2015, passed by learned Additional Sessions Judge (NW), Rohini Courts, Delhi, the petitioners have preferred the present bail applications under Section 438 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr. P.C.), seeking anticipatory bail in FIR No. 811/2015 under Section 498A/304-B/34 of IPC registered at Police Station North Rohini, Delhi.

2. Since the present bail applications arise out of common FIR and impugns the common order, therefore both these applications are heard together and are being disposed of together.

3. The present case is registered at the complaint of Mr. Raj Singh, who is father of Komal (now deceased). According to the complainant, the marriage of his elder daughter Komal was solemnised with Ashwini on 19.01.2014 as per Hindu Rites and Rituals and he had spent Rs.30-32 lacs in the marriage, which included a Hyndai Verna Car, 25 Tolas Gold and Rs.6 lacs cash for household goods. It is alleged by the complainant that after a few days of marriage, husband and parents-in-laws of Komal used to beat her and demanded Rs.10 lacs from him, for which they regularly harassed

his daughter. It is further alleged by the complainant that on 23.10.2015, her daughter called him and told him that her husband, mother-in-law, father-in-law and sister-in-law are beating her and in case she does not bring dowry, they will hang her. Thereupon, complainant made his daughter understand by stating that he will come next day, in evening and according to the complainant, on 24.10.2015, at around 12-12.30 pm, he received a call from Police Station that his daughter has hanged herself. Complainant has raised doubt of his daughter been hanged forcibly by her husband Ashwini, mother-in-law, father-in-law and sister-in-law and requested for taking an appropriate legal action against them.

4. The case was registered, investigation was started and during investigation, a suicide note written by the deceased was recovered from the place of incident. Crime team was also called at spot for inspection of the scene of crime. The dead body of the deceased was preserved at mortuary of Dr. BSA Hospital, Rohini, Delhi. Since the matter being death within seven years of marriage, SDM Saraswati Vihar was intimated, who recorded the statement of parents of deceased. Parents of deceased gave statement that before marriage no

demand of dowry was made by husband and in-laws of deceased but after marriage husband and in-laws of deceased started manhandling their daughter on pretext of dowry demand. It is also stated that on 23.10.2015, the deceased Smt. Komal made a call to her father telling him that her husband and in-laws were assaulting her and threatening her that they will hang her if she does not give them Rs.10 lacs, upon which her father told that he would come on 24.10.2015.

5. During the course of investigation, autopsy of the deceased was conducted at Dr. BSA Hospital on 25.10.2015 and viscera of deceased was preserved by doctor and sent to FSL for opinion and analysis. The cause of death of deceased was opined by doctor on Post Motem No. 691/15 as *“death is due to asphyxia consequent upon ante-mortem hanging.”*

6. State has filed its status report stating that after registration of the case, all the family members have been absconding from their place of residence and when raids were conducted at their residence, the house was found to be locked. It is further submitted by the State that CDRs of mobile phones of accused persons have been obtained and have been analysed but their whereabouts could not be traced till

now.

7. Mr. Jatan Singh, counsel, though argued on behalf of both the petitioners, but for the purpose of the scrutiny of the case, the same are being considered separately. Let us first take up the case of petitioner – Shivani (Bail Appl. No.2706/2015). While arguing on behalf of the petitioner Shivani, Mr. Jatan Singh, contended that she is a qualified girl, having a M.Tech degree and presently working at SB Global School, Meerut Road, Sonapat, Haryana. It is further contended that the petitioner – Shivani leaves home at 7.30 in the morning and comes back home at 5.30 in the evening and on the date of incident, at the relevant time, the petitioner - Shivani was at school and driver of her bus namely Anand Singh, has also sworn an affidavit to this effect. It is also contended that the petitioner - Shivani lives at the first floor of the property No.134, Pocket A-2, Sector 8, Rohini, Delhi alongwith her parents and the deceased and her husband lived on the third floor of the same property and had minimum interaction with them. It is further contended that due to being occupied in her own personal and professional life, she had no interference in the matrimonial life of her brother and sister-in-law

and her name has been implicated by the complainant only to exert pressure upon the family members of the petitioners. It is further argued that the present FIR is the fabrication of the unscrupulous mind of the complainant who is acting in connivance with his family members and the local police and has fabricated the entire chain of events to implicate the entire family of the petitioner and send them behind bars. Counsel has also drawn attention of the Court towards allegation of the complainant that he had given Hyundai Verna car to the in-laws of the deceased at the time of her marriage, but the fact was that the same was purchased by the complainant on 30.12.2013 on installments while the marriage was performed only on 19.01.2014, which alone establishes the falsity of allegations levelled by the complainant against the in-laws of the deceased. Counsel for the petitioner further contended that since the date of marriage and till the date of unfortunate incident, even a single complaint was not made by the deceased or her family members against her in-laws alleging dowry harassment and cruelty.

8. While controverting the suicide note, recovered by the investigating agency, from the place of incident, it is argued that the

same completely exonerates all the family members from the allegations levelled by the complainant and the said suicide letter nowhere mentions that the deceased was being harassed by her in-laws for dowry or that she was subjected to cruelty and harassment. The said suicide note does not mention even the name of the petitioners. It is further contended on behalf of the petitioner - Shivani that she is an unmarried lady and till date has never been found guilty of violating the law and grave prejudice shall be caused to the petitioner - Shivani if she is sent behind bars in the company of hardened criminals and the same would have daunting effect on her psychological and future prospects. Counsel for the petitioner further contended that no recovery is to be effected from the petitioner - Shivani or at her instance, therefore she is not at all required for the purpose of custodial interrogation, therefore the petitioner - Shivani sought grant of anticipatory bail in this case.

9. Counsel for the petitioner – Shivani also undertook that the petitioner - Shivani is ready to join the investigation and shall extend full cooperation to the investigation and shall appear before the Court as well as Investigating Officer as and when called.

10. Now let the case of petitioner – Nikhil Choudhary (Bail Appln. No. 2710/2015), who is also represented through Mr. Jatan Singh, Advocate, be discussed. After perusing the bail application of petitioner – Nikhil Choudhary , this Court finds that both the applications arise out of common FIR and the contents and grounds taken by counsel for the petitioner in both the applications are similar and what distinguishing factor of the petitioner – Nikhil Choudhary as contended by counsel is that petitioner – Nikhil Choudhary is employed as a System Engineer at Infosys since 01.12.2014 and after his initial training at Mysore, he is posted in Pune and petitioner – Nikhil Choudhary is not living at his parental house since 01.12.2014. In support of his contention, counsel for the petitioner has also annexed a document showing the employment of petitioner – Nikhil Choudhary at Infosys at Pune.

11. While arguing the case of petitioner – Nikhil Choudhary , counsel for the petitioner contended that the petitioner – Nikhil Choudhary was not even present at the said place of incident at the relevant time and he was also not one of the persons who gave beatings to the deceased on 23.10.2015. At last, it is contended on

behalf of both the petitioners that impulsiveness, dispersion, frustration, anger or even undue or hypersensitivity of the deceased Komal could have actuated the thought of suicide and if it led to the deceased taking her own life, then the blame cannot be thrown at any other person, even if he/she is in adversary. It is also contended on behalf of the petitioner – Nikhil Choudhary that there is no mention of his name in the suicide note recovered at the place of incident, which however, exonerates all the family members from the allegations levelled by the complainant.

12. Lastly, it is contended on behalf of petitioner – Nikhil Choudhary that the petitioner – Nikhil Choudhary is a 24 years old boy and is a well educated, qualified person and his antecedents are clear. Counsel for the petitioner further undertook that the petitioner – Nikhil Choudhary shall remain present before the Investigating Officer as and when required and since no recovery is to be effected from petitioner – Nikhil Choudhary at his instance, therefore there is no need for his custodial interrogation.

13. Mr. G.M. Farooqui, Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions of counsel for the

petitioners and submitted that the marriage of deceased did not last even for two years and there are specific allegations of demand of Rs.10 lacs as dowry and inflicting of cruelties upon the deceased, in the present FIR /complaint. It is further submitted that the case is very serious in nature and the custodial interrogation of these petitioners is necessary, especially when both the petitioners are absconding from arrest therefore, the bail applications of the petitioners be rejected.

14. I have heard the submissions made by learned counsel for the petitioners and have gone through the status report, impugned order and the material placed on record.

15. Upon careful scrutiny of the case what this Court observes is that there are specific allegations of demand of Rs.10 lacs as dowry and inflicting of cruelties upon the deceased in the present FIR, also that all the family members are absconding and the victim died an unnatural death and the cause of death opined by the doctor, who conducted the Post Mortem is *due to asphyxia consequent upon ante-mortem hanging*. This Court also notes the observation regarding suicide note made by learned Additional Sessions Judge in impugned order dated 09.12.2015, which read as under:

“The suicide note on police file does not exonerate these two applicants. Though it does not name these applicants anywhere, but the very opening lines of suicide note are that the deceased was extremely harassed.”

16. After considering all the facts and circumstances of the present case and the contents of the FIR, this Court is not inclined to grant anticipatory bail to the petitioner - Shivani at this stage, especially when there is no arrest in this case and all the family members are absconding. Accordingly, the bail application (Bail Appln. No.2706/2015) filed by petitioner - Shivani is dismissed.

17. So far as the Bail Appln No.2710/2015, filed by petitioner – Nikhil Choudhary is concerned, the only ground which distinguishes the case of petitioner – Nikhil Choudhary from the case of petitioner - Shivani is that he is working as a System Engineer at Infosys since 1st December 2014 and after his initial training at Mysore, he is posted in Pune and he is not living at his parental house since 1st December 2014 and in support thereof he has annexed the appointment letter dated 13th November 2014 issued by the Infosys Limited, duly signed digitally with the address as 44, Infosys Avenue, Electronics City, Hosur Road, Bangalore 560 100, India. In such a situation, where there is hardly any possibility of petitioner – Nikhil Choudhary being

present at the time and place of incident, this Court finds some merit in the contentions raised in his petition. Therefore, in the peculiar fact and circumstances of the case of the petitioner – Nikhil Choudhary , this Court finds that his case is fit to grant anticipatory bail.

18. Accordingly, petitioner – Nikhil Choudhary is directed to appear before the Investigating Officer as and when called and to cooperate in investigation of this case and in the event of arrest, the petitioner – Nikhil Choudhary be released on bail upon furnishing his personal bail bond in the sum of Rs.30,000/- with two sureties of the like amount to the satisfaction of the arresting officer, subject to the following conditions:

- a) The petitioner shall not flee from justice and shall not leave the country without the prior permission of the Court concerned.
- b) The petitioner shall not try to influence or threaten or even contact any prosecution witness in any manner.

19. In view of the aforesaid discussion, the bail application of petitioner - Shivani Choudhary (Bail Appln. No.2706/2015) is

dismissed and the bail application of petitioner – Nikhil Choudhary (Bail Appln. No.2710/2015) is allowed in the aforesaid terms.

20. Before parting with the aforesaid order, it is made clear that anything observed in this order shall not have any bearing on the merits of the case during trial.

21. With aforesaid directions, both the bail applications stand disposed of.

22. Dasti.

(P.S.TEJI)
JUDGE

DECEMBER 22, 2015
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