

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 07th January, 2016

BAIL APPLN. 30/2016 & CRL.M.A. 187/2016

SANDEEP

..... Petitioner

Through: Mr Sunil Satyarthi, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr M.S.Oberoi, APP with SI Kuldeep Singh, PS- Swaroop Nagar.

**CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an application under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in FIR No.337/2014 under Sections 498A/304B/34 IPC registered at Police Station- Swaroop Nagar, New Delhi.
2. The applicant is stated to be in custody since 20.07.2014.

3. Counsel appearing on behalf of the applicant submits that the family members of the deceased victim have been examined and discharged by the trial court. It is an admitted position, however, that all the public witnesses are yet to be examined.

4. Counsel appearing on behalf of the applicant has invited my attention to the order dated 12.10.2015 in Bail Appln. No.1685/2015 wherein this court was pleased to enlarge the father-in-law of the deceased victim on regular bail, to urge that the applicant herein, who is the husband of the deceased victim, is similarly placed and, therefore, entitled to parity.

5. On the contrary, it has been urged on behalf of Mr M.S.Oberoi, learned APP appearing on behalf of the police, that present is a serious case and there are specific allegations against the applicant. The applicant who is the husband of the deceased victim administered some poisonous substance to the latter within three months of marriage owing to which she died on 20.07.2014. It is, therefore, urged that keeping in mind the seriousness of the offence and the severity of the punishment that conviction would entail, the applicant be not released on regular bail.

6. It is not in dispute that the deceased victim died on 20.07.2014 as a consequence of having consumed *Salfas* tablets. This fact has already been

confirmed by the report of the FSL dated 06.01.2015.

7. A perusal of the depositions of the father, mother, brother and sister of the deceased victim as recorded before the trial court and as recorded by the concerned SDM on 21.07.2014, a day after the unfortunate demise of the applicant's wife by poison, reveals a litany of persistent and relentless demands for dowry. The demands for dowry started right from the time of the marriage itself solemnized on 19.04.2014 and continued unabated for a period of three months thereafter, till the time the life of a young woman was lost on account of consumption of a poisonous substance.

8. There is no gainsaying the circumstance that the deceased victim died an unnatural death within three months of her marriage.

9. Although, it would not be appropriate to comment on the testimony of the witnesses examined at the trial, it would be suffice to observe that the clear and unambiguous testimony of the parents of the deceased victim as well as her siblings prima facie points to the guilt of the applicant qua the offence for which he has been charged. It is further observed that the testimony of the said witnesses seems to be unimpeached in cross-examination.

10. In **State of U.P. Through CBI v. Amarmani Tripathi**, reported as

(2005) 8 SCC 21 the Hon'ble Supreme Court in paragraph 18 observed as follows:-

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) *character, behaviour, means, position and standing of the accused*; (vi) likelihood of the offence being repeated; (vii) *reasonable apprehension of the witnesses being tampered with*; and (viii) *danger, of course, of justice being thwarted by grant of bail*[see *Prahlad Singh Bhati v. NCT, Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan* [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed

a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh*[(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and *Puran v. Rambilas*[(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)”

11. The Supreme Court in terms of its earlier decision in *State vs. Captain Jagjit Singh* reported as *AIR 1962 SC 253*, has observed as under:-

“5.Among other considerations, which a court has to take into account in deciding whether bail should be granted in a non-bailable offence, is the nature of the offence; and if the offence is of a kind in which bail should not be granted considering its seriousness, the court should refuse bail even though it has very wide powers under Section 438 of the Code of Criminal Procedure.”

12. Keeping in view the gravity of the offence; magnitude of the crime; the severity of the punishment that conviction would entail; the nature of the evidence available against the applicant; and the prima facie satisfaction of

this court in support of the charge, in my opinion this is not a fit case for grant of regular bail to the applicant. Resultantly, the present application is dismissed. However, it is made clear that nothing stated in this order shall be considered as an expression by this court on the merits of the case.

SIDDHARTH MRIDUL, J

JANUARY 07, 2016

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