

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : August 09, 2016

+ BAIL APPLN. 953/2016
ARVIND SHARMA Petitioner
Through: Mr.Aman Bhalla, Advocate.
versus

THE STATE N.C.T OF DELHI & ANR Respondent
Through: Mr.Amit Chadha, Additional Public
Prosecutor for the State with Sub-
Inspector Rajesh Kumar, Police
Station Begumpur.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 439 of Cr. P.C., the petitioner seeks bail in a case registered as FIR No. 232/2015 under Section 498-A/304-B/34 of Indian Penal Code, at Police Station Begumpur, Delhi.

2. The facts of this case, in brief, are that on the fateful day of 26.02.2015, a DD No.4-A at about 3.28 AM was received and the daughter of the complainant was lying in the bedroom attached with the bathroom. The head side of the dead body was towards the bedroom and the leg side was towards the bathroom. A green color chunni having a knot and the bolt of the inner side of the door of the bathroom was broken and was found lying in the bathroom. The husband and mother-in-law of the deceased were present at the spot upon inquiry from them, it was revealed that the marriage of the

deceased was held on 15.12.14. Thereafter SDM was called and crime team of the outer district was intimated. The SDM and Inspector/SHO and Crime Team inspected the dead body and site. Chunni and the bolt of the door were seized. Seizure memo was prepared and inquest paper under Section 176 of Cr. P.C. was sent to the SGM mortuary, Mangolpuri. Statement of mother of the deceased was recorded.

3. It is stated by the complainant that the marriage of petitioner was solemnized with the deceased Pinki on 15.12.2014. It is alleged by the complainant that after the marriage of her daughter, her mother-in-law, father-in-law, sister-in-law (nanad), brother-in-law (Nandoi), brother-in-law (Jeth) and sister-in-law (Jethani) started torturing the deceased in demand of money. The son-in-law and his mother, demanded Rs.12 lacs which they reduced to 6 lakhs. A demand of a four wheeler was also made and they got Rs.5 lakhs at the time of marriage of their son. It is further alleged that she always tried to fulfill all their demands for the sake of happiness of her daughter. It is alleged that her daughter had told on a phone call through mobile that now they have started residing at a different address but her son-in-law and other family members continued to demand money again and again. It is further alleged that on 25.02.2015, she had talked with her daughter who told her that the whole day her son-in-law was quarreling with her and in the morning at about 4.10 AM, her son-in-law called her intimating that Pinki is not speaking and that she has hung herself. It is alleged that her son in law (petitioner herein), father-in-law – Gopal Sharma, mother-in-law – Anita, Jeth – Arun,

Jethani – Mamta, Jija – Shri Ram Kumar, Sister – Devi, second jija – Hariom and sister-in-law Sonia are responsible as they all harassed the complainant's daughter to the extent of driving her to her death.

4. Investigation started. Statements of complainant under Section 161 of Cr. P.C. were recorded and the petitioner – Arvind Sharma was arrested. Post Mortem report No.166/15 of the deceased Pinki was obtained in which the doctor gave the opinion that 'the death is due to asphyxia as a result of hanging, all injuries are ante mortem in nature.' In-laws of the deceased were interrogated. Learned Additional Sessions Judge heard the submissions of the petitioner on his bail application and while rejecting the same fixed the matter for prosecution evidence.

5. Mr. Aman Bhalla, learned counsel for the petitioner contended that all the other accused persons in the case have been granted anticipatory bail at the early stage of the matter. It is further contended that all the important witnesses have been examined. Various inconsistencies in the evidence of brother of deceased – Jitender Kumar (PW-8), mother of the deceased (complainant herein), as PW-10 and the mediator – Mr. Prabhunath Mishra (PW-11) were highlighted and it was contended that no case of demand of dowry is made out. It is further contended that the petitioner has clean past antecedents and he is in custody since 26.02.2015. the petitioner is 24 years of age and is the sole bread earner for his parents. It is further contended that there was never any demand of dowry by the petitioner

or his family at the time of marriage or thereafter. Even in the statement of mother and brother of the deceased and the mediator who arranged the marriage, there is no allegation of demand of dowry. The Mediator – Prabhunath Mishra (PW-11) categorically submitted in his statement that there was no demand for any dowry at the time of marriage of the petitioner with the deceased and nor has he any knowledge about any quarrel or harassment of the deceased at the hands of the petitioner or his family members. It is further contented that the present case is based only on the oral evidence and there is no documentary evidence incriminating the accused. Keeping in view the fact that the petitioner had fully cooperated with the police inquiry, the post mortem report does not mention any sign of external injuries, and that the doctor has declared the death to be due to asphyxia as a result of hanging, therefore, the petitioner ought to be released on bail.

6. Mr. Amit Chadha, learned Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions raised by learned counsel for the petitioner. It is submitted that the petitioner is the husband of the deceased and the incident has taken place within only three months of marriage, and there are specific allegations of the complainant against the petitioner regarding demand of dowry and harassment to the deceased. The petitioner is charged with the heinous offence therefore, the petitioner ought not be granted bail in the present case.

7. I have heard the submissions made by learned counsel for the

petitioner and the learned Additional Public Prosecutor for the State. This court observes that the petitioner is charged with the offence punishable under Section 498-A/304-B/34 of IPC and the marriage of the petitioner was within just three months and there are specific allegations of demand of dowry and regarding cruelty and harassment against the petitioner, the investigation in this case has been completed, charge sheet has been filed.

8. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee*** (2010) 14 SCC 496, the Hon'ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors:

9. ... *among other circumstances, the factors [which are] to be borne in mind while considering 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 accusation;*
- (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 influenced; and*

*(viii) danger, of course, of justice being thwarted
by grant of bail.*

9. Considering the aforesaid facts and circumstances of the present case; the fact that the petitioner is specifically named by the complainant regarding demand of dowry, and of harassing the deceased, this Court is not inclined to grant bail to the petitioner.

10. Resultantly, in the considered opinion of this court, the facts emerging from the record culminate into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage.

11. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

12. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

(P.S.TEJI)
JUDGE

AUGUST 09, 2016
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