

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : August 12, 2016

+ BAIL APPLN. 1167/2016
FARHAN @ SAMEER Petitioner
Through: Mr.Tanvir Quiser, Advocate.

versus

STATE NCT OF DELHI Respondent
Through: Mr. Amit Chadha, Additional Public
Prosecutor for the State with Sub-
Inspector Sandeep Rathi, Police
Station Ranhola, Delhi.

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. 21/2013 under Section 364/302/120B/201/34 of Indian Penal Code, at Police Station Ranhola, Delhi.

2. Petitioner is the husband of deceased Abhilasha. Marriage between them was solemnized on 19.03.2012. In the month of July 2012 a missing report was lodged by the petitioner with Police Station Ranhola, Delhi vide DD No.48A, dated 21.07.2012. On 20.07.2012 a female dead body was recovered near railway track and the inquest proceedings were conducted by Police Station Gabhana Aligarh, U.P.

and the body of deceased was disposed of as unclaimed as the identity of body could not be established.

3. The present case was registered on 03.02.2013 on the complaint of Santosh Devi, who was mother of the deceased Abhilasha, wherein she suspected her son-in-law (petitioner herein) that he might have murdered her daughter and disposed the body somewhere. Investigation started and on the same date, the petitioner was interrogated, wherein he disclosed that he came to Delhi and started to live with Abhilasha (since deceased). In the meantime the petitioner came to know that the deceased had illegal and immoral relation with a person namely Bobby. Thereafter, she threatened him with dire consequences if he did not marry her. Finally the petitioner got married with Abhilasha but he was not happy with this marriage and he wanted to get rid of her. It is further disclosed by the petitioner that he planned the murder of Abhilasha alongwith Shanu . On 19.07.2012 he went to Aligarh with Abhilasha on the pretext of attending a marriage and met Shanu on the way (the co-accused in the present case). Thereafter the petitioner, alongwith Shanu, Mushir Ahmad and unknown person executed the murder of Abhilasha and the body was dumped near the railway track to destroy the evidence. Accordingly, the petitioner was arrested on 03.02.2013. Inquest papers of the deceased were obtained in which the doctor opined the cause of death as 'death is due to shock and hemmorrhage as the result of ante mortem injuries'. Thereafter, the other co-accused Shanu @ Moin Khan was arrested on 08.03.2013.

4. Mr. Tanvir Quiser, learned counsel for the petitioner contended there is no legal evidence against the petitioner and that he has been falsely implicated by the police of Police Station Ranhola, Delhi. It is further contended on behalf of the petitioner that he himself had gone with his mother in law to lodge a person's missing report therefore presumption of his innocence can be drawn in faovur of the petitioner. Delay of seven months in lodging the FIR is the further contention on behalf of the petitioner. Even the FIR does not disclose the name of the petitioner. It is further contended that there is no eye witness to the incident and the entire case is based on circumstantial evidence and there is no evidence regarding last seen evidence and the prosecution has not proved any motive behind the offence. Even there is no recovery of weapon of any offence at the instance of the petitioner.

5. It is further contended on behalf of the petitioner that the incident occurred on 21.07.2012 and the FIR was registered on 03.02.2013 and there is no explanation for the delay in lodging the FIR. As per counsel for the petitioner, in a case of murder, delay cannot be exceeded by two or three hours if the police station is near to the spot but in this case there has been a delay of 7-8 months, therefore no reliance can be placed on the FIR in question. It is further contended on behalf of the petitioner that a case, which is based on circumstantial evidence, starts from the last seen evidence and since there is no last seen evidence in this case therefore, no special knowledge under Section 106/107 of Evidence Act can be attributed to the petitioner.

6. Apart from the aforesaid contentions, marriage between the petitioner and the deceased is challenged on behalf of the petitioner while contending that there is no evidence of marriage between the petitioner and the deceased except the photographs, which can be clicked by the complainant even without solemnizing the marriage. Deposition of the complainant is referred on behalf of the petitioner in which she stated that there used to remain quarrel between the petitioner and the deceased but at the time of cross-examination, she categorically stated that no complaint was made to the police or any other authority regarding quarrel. It is further contended that the petitioner went to the house of his mother-in-law in search of Abhilasha and he had also gone with her mother-in-law for lodging missing report of Abhilasha therefore the presumption of his innocence cannot be ignored. Moreover, public witness – Neha (PW-6) has been turned hostile and did not support the prosecution case.

7. Learned counsel for the petitioner further drew attention of the Court that as per the prosecution case and the publication which was published in the newspaper by the mother of the deceased, the age of deceased was 25 years, however, in the post mortem report conducted by the doctor, the age of the deceased was stated to be 17 years, therefore no question of identification of the deceased arises. It is further contended on behalf of the petitioner that no independent witnesses are available in the present case. So far as medical evidence of doctor (PW-10) is concerned, it is contended that the doctor had deposed in his cross-examination that the death may be caused if the

deceased would have been met with train accident, therefore, the cause of death may be of an accident.

8. It is further urged on behalf of the petitioner that the dead body of the deceased was not recovered at the instance of the petitioner. However, learned counsel for the petitioner has contended that there are several judgments of Hon'ble Supreme Court in which it is held that even if the dead body is recovered at the instance of accused, it does not mean that he is the accused of that offence and that the mere leading of the police by the accused and pointing out the place where the dead body was recovered, which is an open area and is accessible to all, does not indicate the guilt of the accused.

9. In support of the aforesaid contentions, learned counsel for the petitioner relied upon the following judgments:

- i. *Mohd. Ali vs. Ram Swaroop*, AIR 1965 161;
- ii. *Hiyakat Singh vs. Emperor*, AIR 1932 209;
- iii. *Siddappa vs. State of Karnataka*, 2010 (1) Crime 12;
- iv. *Tarelal vs. State of M.P.*, 1996 (2) Crimes 144;
- v. *Javir vs. State of U.P.*, 2010 (3) Crimes 488 and AIR 1990 SC 1032;
- vi. *Raj Kumar vs. State of Himachal Pradesh*, 2002 CRiLJ 3816;
- vii. *Suresh Pawar vs. State of Chhattisgarh*, 2003 (1) Crimes 311;
- viii. *Amit @ Mandeep vs. State of NCT of Delhi*, 2006 (3)

Crimes 585.

10. Mr. Amit Chadha, Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions raised by learned counsel for the petitioner. It is contended that on a suspicion of the complainant, the petitioner was interrogated on 03.02.2013 and he himself disclosed that he came to Delhi and started living with daughter of the complainant and after sometime he came to know that the deceased was having illegal and immoral relations with a person namely Bobby. When the petitioner objected the deceased threatened him with dire consequences and forced him to marry with her. The petitioner further disclosed that after marriage, he was not happy and wanted to get rid of the deceased. It is further disclosed by the petitioner that on 11.07.2012 he alongwith other person Shanu, planned the murder of deceased and according to plan, the petitioner, alongwith Shanu, Mushir Ahmad and one other unknown person executed the murder of Abhilasha and the body was dumped near the railway track to destroy the evidence. The petitioner has also identified the place of incident, which was situated in the jurisdiction of Police Station Gabhana Aligarh. Learned Additional Public Prosecutor for the State further stated that during the course of investigation it was revealed that a female dead body was recovered near railway track on 20.07.2012 however the same was disposed as unclaimed as the identity of body could not be established. Inquest papers were obtained and doctor had opined the cause of death as Death due to shock and hemorrhage as the result of ante mortem

injuries.

11. So far as motive is concerned, learned Additional Public Prosecutor for the State further contended that there was real motive for the petitioner to commit the crime in question as he was not happy with marriage of the deceased Abhilasha. It is further stated that the charge sheet has been filed and 10 out of 16 witnesses have been examined. Moreover, prosecution witnesses have supported the case of prosecution and the circumstances of this case do not rule out the possibility of complicity of petitioner herein. It is further informed that four bail applications of the petitioner have been dismissed by the learned Additional Sessions Judge. Since the trial is at fag end, therefore the petitioner be not granted bail in this case.

12. I have heard the submissions made by learned counsel for the petitioner and the learned Additional Public Prosecutor for the State. I have also gone through the impugned order as well as record of the case. Admittedly, the charge sheet in this case has been filed and 10 out of 16 witnesses have been examined. Petitioner has been charged with the offence punishable under Section 364/302/120-B/201/34 of IPC which is a grievous in nature.

13. 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.*

14. Considering the aforesaid facts and circumstances of the present case; the fact that the complainant has specifically suspected the petitioner being involved in murdering her daughter, and the fact that the case is based on circumstantial evidence; pending adjudication before the trial court and the trial of the case is at fag end, this Court is not inclined to grant bail to the petitioner.

15. 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.

16. 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.

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

AUGUST 12, 2016
pkb

(P.S.TEJI)
JUDGE