

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : September 01, 2016

+ BAIL APPLN. 1509/2016
ASHWANI KUMAR SHARMA Petitioner
Through: Mr.R.N. Sharma and Mr.Manish
Kumar, Advocates.

versus

STATE (GNCT OF DELHI) Respondent
Through: Mr. Amit Chadha, Additional Public
Prosecutor for the State

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

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P.S. TEJI, J.

1. By this petition filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.) the petitioner seeks bail in FIR No.402/2014 under Section 498-A/302/34 of IPC, at Police Station Swaroop Nagar, Delhi.

2. The case at hand, is yet another case in which a married lady took her life in her matrimonial home by consuming tablet quick phos and one tablet paras after assault with family members followed by Giddiness, lose motion, vomiting 6-7 episodes.

3. The present case was registered at the instance of Mrs. Mala Sharma, i.e. mother of the deceased - Neha Sharma. It is stated that the marriage of her daughter was solemnized with the petitioner on

06.02.2006 and out of this wedlock two children were born. It is further stated that on 10th April when the deceased Neha was operated in Saroj Hospital for ailment of Appendix she was beaten by her mother-in-law – Madhubala, in her matrimonial home. Thereafter, she was brought to her parental home and on 14.06.2014 she was taken back by her husband. It is further alleged that after three days, she was again assaulted by her in-laws. It is further submitted that on 23.08.2014, her husband told that Neha was not well and on hearing this, they came to St. Stephen's Hospital. It is stated by the complainant in her complaint that her brother Sachin who was already present at the hospital, informed her that mother-in-law of Neha had assaulted her daughter and had administered poison to her. Accordingly a complaint under Section 498A/306/34 of IPC was registered.

4. On 24.08.2014 on the basis of post mortem of Neha Sharma (since deceased), conducted by Dr. Bhim Singh, who verbally opined that there was head injury on the right side which is sufficient to cause death, the ACP, Jahangirpuri passed direction to add Section 302 of IPC in the FIR and directed to conduct further investigation. The petitioner was arrested on 24.08.2016 and since then he is languishing in jail. A bail application was moved by the petitioner which was dismissed by the learned Additional Sessions Judge vide order dated 08.07.2016 and now the petitioner is before this Court for seeking bail on the ground of parity with his father-in-law, who has already been granted bail in this case, vide order dated 10.06.2016.

5. Learned counsel for the petitioner contended on behalf of the petitioner that there is no specific allegation of tendering poison to the deceased against him and it was the petitioner who took the victim to the hospital and took all her care in hospital. It is further contended on behalf of the petitioner that when the victim was brought in hospital, she was in conscious situation and the entire incident was narrated to the doctor that she herself had consumed pesticides. Even the Dr. Ashutosh Tiwari (PW-4) in his statement deposed that the victim had consumed pesticides, therefore the allegation under Section 302 is not tenable. It is further contended on behalf of the petitioner that even perusal of the FIR does not attribute any specific role of the petitioner in the commission of crime. It is argued that in the post mortem report, no such injury was ever observed by the autopsy surgeon and it is beyond comprehension as to how the case was later converted under Section 302 of IPC.

6. It is further contended on behalf of the petitioner that the charge sheet in this case has been filed. It is further stated that the father of the petitioner has been granted bail in the present case vide order dated 10.06.2016, however the bail application of the petitioner has been dismissed by the learned Additional Sessions Judge vide order dated 08.07.2016 on the ground that the petitioner may threaten the witnesses or tamper the evidence. In this regard, learned counsel for the petitioner submitted that all the material witnesses have been examined and there is no chance of threatening the public witnesses. Learned counsel for the petitioner further submitted that the present

case is a case of suicide as the deceased herself gave a history of consumption of poisonous substance to the concerned doctor, which should be treated as oral dying declaration. In support of this contention, learned counsel for the petitioner relied upon the judgment in ***Jaipal vs. State of Haryana AIR 2002 SC 3447*** and ***Nitish Yadav vs. The State, 2011 (2) JCC 1471***, in which it was held that *aluminum phosphide* is mostly commonly taken for suicidal purposes. While drawing attention of this Court to the final opinion of the doctor being Opinion No.98/15 dated 29.05.2015, given on the basis of FSL Report, wherein Dr. R.P. Singh, Autopsy Surgeon of BJRM Hospital, Delhi opined that cause of death of deceased was “*Aluminum Phosphide Poisoning*”.

7. It is further contended on behalf of the petitioner that there was no motive to cause murder of his wife. All the more the petitioner has clean antecedents and belongs to a respectable family, he is a government servant i.e, constable in Delhi Police, and there is no likelihood of petitioner absconding from the case. Lastly, it is stated that the petitioner is languishing in jail since 24.08.2014 and on the same footing, co-accused Prabhu Lal Sharma has been granted regular bail therefore, the petitioner sought parity with the co-accused.

8. Learned Additional Public Prosecutor appearing on behalf of the State opposed the aforesaid contentions made on behalf of the petitioner. It is contended on behalf of the State that the victim was just 30 years of age and was mentally and physically harassed by her in-laws, which compelled her to consume pesticides. There is also a

recovery of three tablets at the instance of the petitioner which was recovered from the store room on first floor of the house. In the final FSL report it was found that the exhibits contained 'phosphide' and 'mercury', upon which the doctor opined the cause of death was 'aluminum phosphide poisoning'. Accordingly, charge sheet has been filed and 14 out of 34 witnesses have been examined. With regard to the 'parity' it is contended by learned Additional Public Prosecutor for the State that the petitioner is a husband of the deceased and he has the high responsibility about the care and caution of his wife in her matrimonial home, therefore, he cannot seek parity with the other co-accused. The petitioner is charged with the heinous offence punishable under Section 302/498-A/34 of IPC and while considering the seriousness of the allegations and the offences with which the petitioner is charged, the learned Additional Sessions Judge has rightly dismissed the bail application of the petitioner, which does not suffer from any infirmity. Therefore, the bail application of the petitioner be rejected.

9. I have heard the submissions of learned counsel appearing on behalf of the petitioner as well as the submissions of learned Additional Public Prosecutor for the State and also gone through the material placed on record.

10. For careful scrutiny of the case, the contents of the petition as well as charge sheet and the deposition of the material witnesses before the Trial Court have been gone through and this Court observes that the petitioner has been charged with the offence punishable under

Section 302 of IPC.

11. So far as the contents, grounds, circumstances, explanations and reasoning given by the petitioner in the present petition are concerned, this Court observes that all such circumstances shall be tried by the concerned Court and be decided by leading cogent evidence. For the purpose of deciding the bail application, this Court need not go to the merits of the case, what this Court needs to consider is as to whether the petitioner has been able to make out any prima facie case for grant of bail to the petitioner.

12. The admitted case of both the sides is that the petitioner was arrested in this case on 24.08.2014 and since then he is in judicial custody. It is also an admitted fact that the petitioner is charged with the offence punishable under Section 302 of IPC; out of 34 witnesses, 14 witness have been examined in this case; other co-accused has been granted bail in the present case.

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. This Court observes that the learned Additional Sessions Judge has declined the bail application of the present petitioner on the ground that the petitioner is facing trial for the very heinous offences punishable under Section 302/498-A/34 of IPC; there are specific allegation against the petitioner and it was observed by learned Additional Sessions Judge that the petitioner may threaten the prosecution witnesses or may tamper with the evidence or may evade the trial.

15. So far as the contention raised by learned counsel for the petitioner that since the case of the petitioner rests on similar footing as that of the co-accused, who has been granted bail in this case, therefore he is also entitled to bail. In this regard, this Court thinks fit to reiterate the settled principle that no doubt, the weight of judicial parity should be followed, but on the other hand, this Court is of the

conscious opinion that the word 'parity' connotes a state when a person is placed on the same footing as of the other person. This court is also of the opinion that that parity cannot be the sole ground for granting bail in a case where the bail applications of other co-accused whose bail applications had been allowed and are released on bail. In fact, it is purely a discretion of the Court to consider as to whether in a particular case, the applicant is entitled to bail or not.

16. In the considered opinion of this Court, before granting or refusing bail, the court must satisfy itself after considering the material placed on record and further developments in the investigations or otherwise and other peculiar circumstances of each case, which show that there are sufficient grounds for releasing the applicant on bail. If on examination of any case, it transpires that the case of the applicant before the court is identically similar to the accused on facts and circumstances, who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail. This Court is also of the opinion that in criminal jurisprudence, every case stands on different footing and no straightjacket formula can be adopted in the facts of each case.

17. In the facts of the present case, this Court observes that undoubtedly, the petitioner is in judicial custody since the date of his arrest, i.e., from 24.08.2014 and father of the petitioner, who is the co-accused, has been granted bail in this case. But the case of the petitioner is distinguishable merely on the fact that he was the husband of the victim and he has all the responsibility to take all measures and

to provide such an atmosphere where the dignity of his wife is maintained in all respects. The fact is that the wife of the petitioner (victim herein) was ill treated in her matrimonial home which compelled her to take such a drastic step of finishing her life.

18. In light of the facts and circumstances of the present case, this Court finds the allegations against the petitioner being serious in nature and the fact that the trial is at an initial stage and only 14 out of 34 witnesses have been examined so far. The petitioner is a Constable in Delhi Police and there is every likelihood of petitioner to influence the other public witnesses. Therefore, this Court is not inclined to grant bail to the petitioner – Ashwani Kumar Sharma, at this stage.

19. 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.

20. In the light of the aforesaid, the bail application filed by the petitioner is dismissed.

P.S.TEJI, J

SEPTEMBER 01, 2016
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