

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

Judgment delivered on : August 19, 2016

+ BAIL APPLN. 1581/2016
MS DARSHNA Petitioner
Through: Mr.Jatan Singh and Mr.Pawan
Madhukar, Advocates.

versus

STATE (GOVT OF NCT DELHI) Respondent
Through: Mr.Amit Chadha, Additional Public
Prosecutor for the State with SI Uma
Datt, Police Station Mangol Puri,
Delhi.

+ BAIL APPLN. 1649/2016
MS KAMLESH Petitioner
Through: Mr.Jatan Singh and Mr.Pawan
Madhukar, Advocates.

versus

STATE (GOVT OF NCT DELHI) Respondent
Through: Ms.Manjeet Arya, Additional Public
Prosecutor for the State

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

JUDGMENT

P.S.TEJI, J.

1. By these petitions filed under Section 438 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr. P.C.), the petitioners seeks anticipatory bail in FIR No. 711/2016 under Section 498A/304-

B/34 of IPC registered at Police Station Mangolpuri, Delhi.

2. Though both the bail applications arise out of a common FIR, the bail application of petitioner-Darshna was reserved on 08.08.2016 and the bail application of petitioner – Kamlesh was reserved on 12.08.2016. For keeping the record straight, the bail application of petitioner – Darshna is taken first for consideration.

3. The case at hand, is yet another case in which a married lady took her life in just 5 months of her matrimonial life, due to demand of dowry and torture from her in-laws, which is so alleged by the complainant – Inder Pal (brother of the deceased), in the FIR in question. Petitioner – Darshna is the sister-in-law of the victim.

4. It is alleged by the brother of the deceased (complainant herein) that his parents had already expired and he has two brothers and two sisters, one of which was married to Devender on 04.02.2016 with great pomp and show. Being the guardian of Mamta (since deceased) he gave items and gifts in her marriage and after one month of marriage, her husband - Devender, jeth - Ashok, mother-in-law – Mohri Devi, sister in law, who is residing at Sultanpuri and youngest sister in law who is married but staying at her parental home after having matrimonial disputes, started harassing his sister on account of dowry. It is further alleged in the FIR that all the accused taunted her for not bringing a bike and jewellery just as received in the marriage of elder brother of Devender. It is further alleged in the FIR that the youngest sister-in-law used to taunt the complainant's sister, find

faults in her work and used to mentally torture her. The allegation of beating his sister – Mamta, was also levelled against the husband – Devender, Sister-in-law who is residing in Sultantpuri and mother-in-law namely Mohri Devi and they even restricted his sister Mamta from talking with the complainant s on mobile.

5. Further, it is stated in the FIR that on 15.05.2016, when sister of the complainant came to her parental home, she told that Devender does not want to pursue his job and wishes to start his business for which the in-laws demanded Rs.1.5 lacs from brother of the deceased due to which she was found to be in tension. It has been alleged that the jewellery articles of the deceased Mamta were with the mother-in-law and on demand of the same by the dceceased, the mother-in-law always would fight with her. It is further stated that the deceased narrated before her cousin sisters namely Kalpna and Sharda about the pressure from her mother-in-law for having a baby. A mobile phone was given to Mamta upon returning to her matrimonial home on 15.06.2016 by her younger brother Mahender, for her safety and well being. It is further informed that when Mahender called the deceased, it was revealed that in-laws were fighting with Mamta and that the complainant has recording thereof. However, on 27.06.2016, at the residence of the in-laws of Mamta, all the in-laws assured the complainant that they will not give any chance for complaint in future. It is further alleged that the deceased told the complainant in seclusion that her jeth and elder sister-in-law were throwing her out of matrimonial house by telling that if she could not help them, then she

has no right to stay there.

6. It is further stated by the complainant that on the fateful day i.e. on 29.06.2016 at about 10.15 am when Mahender called Mamta, the in-laws were fighting with her at the pretext of breaking tea strainer and at about 4.30 pm, he received a call from his aunt informing him that Mamta has locked the door from inside and neither is she opening the door nor is she responding. Immediately thereafter, the complainant left to Mangolpuri and on the way, he received a call from Jeth of Mamta (Ashok) informing him that the police has arrived and they broke the door and Mamta is now no more. Lastly, it is stated that all the accused persons were present at the time of incident on 29.06.2016. Upon a strong suspicion on husband-Devender, Jeth Ashok, mother-in-law – Mohri Devi, sisters-in-law who are residing at Sultanpuri, Karol Bagh and youngest sister-in-law of Mamta, the present case has been registered.

7. Petitioner – Darshna, apprehending her arrest in the present case, moved a bail application before learned Additional Sessions Judge-04 (North-West), Rohini Courts, Delhi, which was rejected vide order dated 12.07.2016. Hence, the petitioner is before this court for seeking anticipatory bail in the present case.

8. Learned counsel appearing on behalf of the petitioner – Darshana vehemently contended that there is not even a single allegation against the petitioner in the complaint and that no role has been attributed to the petitioner which may even remotely suggest that

she was in any way involved in the commission of the alleged offence, however, the perusal of the FIR shows that the complainant has raised only a suspicion while stating that the sister-in-law residing at Karol Bagh may be responsible. It is further contended on behalf of petitioner – Darshana that she was married three years ago and also has a boy of two years. She is residing with her husband at her matrimonial house. Moreover, she has been also working since the last 4-5 years at a beauty parlour in Rohini and her working hours are 8.30 am till 9 pm. She used to visit the house of her brother only on festivals. It is further contended that on the date of incident or prior to the incident, the petitioner was not even present at her parental home. It is further contended that the petitioner – Darshana has been victimized and all the allegations are false and baseless. The petitioner is confident to prove her innocence for which she is ready to join the investigation as and when required and undertakes to extend her full cooperation to the investigation agencies.

9. While arguing the bail applications of the petitioners, learned counsel for the petitioner has relied upon a decision of this court in Bail Appl. No.2706/2015 and Bail Appl. No. 2710/2015, dealing with similar sections of the IPC, wherein both the anticipatory bail applications were disposed of vide common order dated 22.12.2015. In the said case, bail application of one Shivani was dismissed as she was *specifically named* by the complainant in the FIR and the other bail application of Nikhil Choudhary was allowed *as his presence at the place of incident was highly improbable*. It is contended on behalf

of the petitioner that since the petitioner was not present on the date and place of incident, therefore, the petitioner ought to be granted bail in the present case.

10. Additional Public Prosecutor appears on behalf of the State and a status report has been filed in the case.

11. The learned Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions of counsel for the petitioner and submitted that the marriage of deceased did not last even for six months and there are specific allegations of demand of Rs.1.5 lacs for starting new business from husband of the deceased. The mother-in-law and sisters-in-law used to harass the deceased on account of dowry and they used to taunt that the elder brother of accused Devender has received bike and jewellery in his marriage and the deceased has not brought the same. There are also specific allegations that younger sister-in-law used to find faults with the deceased to cause mental torture. Allegation of beating is also levelled at the sister-in-law residing in Sultanpuri. It is also specifically stated in the complaint that on the date of incident i.e. on 29.06.2016 in the morning, the younger brother Mahender called the deceased Mamta and he found that her in-laws were fighting with her over the breaking of a tea strainer and at about 4.30 PM on the same date, the information regarding the deceased bolted the room from inside was received and ultimately Jeth of Mamta informed the complainant that his sister had died. As per the post mortem report the cause of death

was opined to be *asphyxia as a result of ante-mortem hanging*. Learned Additional Public Prosecutor for the State further contended that the order of this court, as relied upon by the learned counsel for the petitioner has no relevance to the present case, as in the complaint/FIR the complainant has specifically raised suspicion on husband – *Devender, Jeth Ashok, mother-in-law – Mohri Devi and sisters in law who are residing at Sultanpuri, Karol Bagh (petitioners herein)* and youngest sister in law may be involved in the death of the deceased Mamta. Keeping in view the fact of the present case, the petitioner ought not to be granted concession of pre-arrest bail in the present case.

12. I have heard the submissions made by learned counsel for the petitioner as well as learned Additional Public Prosecutor for the State. I have also gone through the status report and the material placed on record.

13. Upon careful scrutiny of the *case what this Court observes is that there are specific allegations of demand by the husband of the deceased of Rs.1.5 lacs* on account of starting new business. This court also observes that there are allegations regarding taunts from the mother-in-law and *sister-in-law* for not bringing a bike and jewellery as received by the jeth of the deceased, and inflicting cruelties upon the deceased in the present FIR. This court further observes that the victim died an unnatural death within just five months of her marriage, and the cause of death, as opined by the doctor, who conducted the

Post Mortem is *asphyxia as a result of ante-mortem hanging*.

14. So far as the reliance placed upon the order of this court passed in Bail Appln. No.2706/2015 and 2710/2015, this court finds that the same is distinguishable from the facts and circumstances of the present case, *as in the bail application of Nikhil*, he was working outstation and he had filed his digital attendance sheet and raised other contentions, for that reason the Court came to conclusion that the presence of petitioner- Nikhil in that case was not probable at the time and place of incident. Even in the said bail application, name of the *nanad* was mentioned in the FIR so the anticipatory bail of *nanad* was declined. Moreover, in criminal jurisprudence the reliance cannot be placed on another case, particularly in bail matters, as each case stands on its own footings and needs to be considered on peculiar facts of that case.

15. The Apex Court, in ***Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.***, (2011) 1 SCC 694, highlighted the following parameters while considering the anticipatory bail application, which will be relevant for deciding the present petitions:

- a. *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- b. *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*

- c. *The possibility of the applicant to flee from justice;*
- d. *The possibility of the accused's likelihood to repeat similar or other offences;*
- e. *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- f. *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
- g. *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections [34](#) and [149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;*
- h. *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- i. *The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- j. *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the*

prosecution, in the normal course of events, the accused is entitled to an order of bail.

16. After considering all the facts and circumstances of the present case, the contents of the FIR and in the light of the aforesaid principles, this Court is not inclined to grant anticipatory bail to the petitioner – Darshna at this stage, especially when there are specific allegations against the petitioners i.e., the *sister-in-law residing at Sultanpuri and Karol Bagh may be involved in the incident in question*. Accordingly, finding no merit in the contentions raised in the bail application filed by petitioner – Darshna, the same is dismissed.

BAIL APPLN. 1649/2016

17. The present bail application has been filed during the pending decision in the bail application of petitioner – Darshna. After hearing counsel for the petitioner, the same was also reserved to be decided alongwith bail application No.1581/2016.

18. Argument advanced by the counsel for the petitioner is that the similar bail application of petitioner – Darshna is already been reserved by this Court and the same is pending for decision before this court. Accordingly, the bail application of petitioner – Kamlesh was also kept reserved for order on 12.08.2016.

19. Since the facts of the case are same, therefore this court need not reiterate all the facts here again as the same have already been described while deciding the bail application of petitioner – Darshna

vide this common order. In the present case of the petitioner – Kamlesh, her bail application was rejected by the learned Additional Sessions Judge-04 (North-West), Rohini Courts, Delhi, by a separate order dated 29.07.2016. While arguing the bail application of petitioner – Kamlesh, learned counsel for the petitioner contended that even if the statement of the complainant, that on 27.06.2016 when the complainant and his younger brother Mahender went to the matrimonial house of the deceased, the deceased took her brothers to a side and informed that her jeth and elder nanad were throwing her out of the home by saying that if she cannot help them, she has no right to stay in her matrimonial home, is believed to be true, the same cannot be presumed to be such demands which may compel the deceased to commit suicide. It is further submitted that the petitioner was married to one Pawan around 18 years ago and she has two boys of aged about 15 and 16 years and residing at Sultanpuri for the last 3-4 years. It is contended that the petitioner – never interfered in the matrimonial life of her brother and sister-in-law as she was always occupied with her own personal life. She used to visit the house of her brother only occasionally and mostly on festivals and that too with her sons. Moreover, on the date of the alleged incident or even prior to the incident, the said petitioner was not at her parental home. The petitioner is falsely being implicated by the complainant only to exert pressure upon the family members of the petitioner. It is further contended on behalf of the petitioner that she is a married lady and till date she has never been found guilty of violating any law of the land.

No recovery is to be effected from the petitioner or at her instance and she is not at all required for the purpose of custodial interrogation and when the petitioner is ready to join the investigation and to extend full co-operation to the investigation agencies, no useful purpose would be served by sending her to custody.

20. Learned Additional Public Prosecutor for the State appears on behalf of the State and submitted that the present case is on the similar footings of the case of petitioner – Darshna. The Complainant has specifically alleged that *sisters in law who are residing at Sultanpuri, Karol Bagh (petitioners herein)* used to taunt and harass the deceased on account of demand of dowry.

21. After considering the facts of the case and the arguments raised on behalf of the petitioner – Kamlesh, this Court finds that the arguments, contentions and the grounds are similar in nature as in the case of petitioner-Darshna, which this Court has already dealt with while dismissing her bail application. In the considered opinion of the court, the fate of bail application of the present petitioner – Kamlesh would remain be the same as of petitioner – Darshna, as the complainant has specifically raised suspicion on husband – Devender, Jeth Ashok, mother-in-law – Mohri Devi and *sisters in law who are residing at Sultanpuri, Karol Bagh (petitioners herein)* and youngest sister in law that they may be involved in the death of the deceased Mamta and in such a case, relating to ‘dowry-death’, especially when the investigation is at a primary stage and the offence in which the petitioner is booked is of a grave nature which has a vide impact of the

society, this Court is not inclined to grant bail to the petitioner – Kamlesh. Accordingly, finding no merit in the contentions raised in the bail application filed by petitioner – Darshna, the same is dismissed.

CONCLUSION:

22. For the foregoing reasons and on the settled legal positions, the bail applications filed by both the petitioners – Darshna and Kamlesh are dismissed.

23. 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 petitioners. 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.

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

**(P.S.TEJI)
JUDGE**

AUGUST 19, 2016
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