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

+ **BAIL APPLN. No.2483/2016**

Date of Decision: 05th December, 2016

ZAHIDA & ANR. **PETITIONERS**

Through Mr.Ajay Raj Singh, Adv. with
Mr.Sabbir Ali, Adv.

versus

STATE **RESPONDENT**

Through Mr.Sudershan Joon, App for the
State with SI Surendra Singh, PS
Fatehpur Beri.

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

P.S. TEJI, J(Oral)

1. The present application under Section 438 of the Code of Criminal Procedure, has been filed by the applicants seeking anticipatory bail in a case arising out of FIR No.418/2016 registered under Sections 498A/304B/34 of the Indian Penal Code at Police Station Fatehpur Beri.

2. As per the FIR lodged by the complainant, it was stated by her that she got her daughter Aarisha married with Saif Ali Khan. It was stated by the complainant that after the marriage, her daughter lived with her husband, mother-in-law Zahida and father-in-law Sahir Khan@Shahid Khan. It was further stated that at the

time of the marriage of her daughter, she had given cash of Rs.51,000/-; household articles; jewellery about 12 tola and half kilogram silver as dowry. It was further stated by the complainant that after six to seven months of her daughter's marriage, her in-laws demanded a car which they fulfilled by giving a used/second hand santro car. It was next stated by the complainant that in 2014, a motorcycle of Yamaha make was also given to the in-laws of her daughter. It was also alleged in the FIR that whenever demand of money was made by the in-laws of her daughter, the same were fulfilled and despite that, after two months of marriage, her father-in-law and mother-in-law started quarrelling with her and gave her beatings. It was further stated that thereafter, the in-laws and her daughter along with her husband got separated but they kept on visiting Aarisha frequently and tortured her by quarrelling and beatings. It was further submitted that thereafter the complainant received information of her daughter lying unconscious and her subsequent admission to a hospital. It was stated by the complainant in the FIR that the cause of death of her daughter was poisoning by the father-in-law and mother-in-law.

3. Learned counsel for the applicants has submitted that the FIR was registered on a complaint of Smt. Mehjabeen, with regard to domestic violence and dowry death of her daughter namely

Aarisha against Mr.Saif Ali Khan, her husband; Ms.Zahida, mother-in-law and Mr.Shahid Khan, father-in-law.

4. Learned counsel for the applicants has submitted that the marriage of the deceased Aarisha and Saif Ali Khan was solemnized on 1st June, 2012 and that there was no exchange of dowry or any other articles. It is submitted that the applicants accepted their wedlock and the couple resided along with them. It is alleged that the complainant tried to misguide the deceased Aarisha for getting separated from the matrimonial home.

5. It is further alleged by learned counsel for the petitioner that on 1st January, 2014, the complainant along with the other family members of the house, visited the house of the applicants and gave them beating on petty issue upon which the petitioner/applicant no.1 lodged an FIR. It is further submitted that on 29th May, 2014, the deceased Aarisha lodged a complaint to the DCP of Hauz Khas, Delhi, to the effect that the complainant with the other maternal family members, were against her marriage and that they were instigating her against her matrimonial family. In the said complaint, it was also stated by the deceased that in case something happens to her husband or to other members in his family, her maternal family members would be responsible for the same.

6. It is further submitted that due to continuous instigation, on 28th April, 2015, the applicants left the home and started residing elsewhere and that the deceased Aarisha and the accused started residing separately. It is next submitted that the applicants telephonically came to know from the paternal aunt of the deceased, that the deceased had consumed poison.

7. In support of his contention, learned counsel for the applicants relies on the CCTV footage of the date of incident to prove that the applicants were at their home when the incident took place. It is further submitted that the applicants are living at a distance of 600 meters from the house of the deceased and as per the camera recordings, they were not present at the spot at the time of consumption of poison by the deceased.

8. Learned APP for the State has vehemently opposed the contentions raised by learned counsel for the applicant on the ground that since there are specific allegations levelled against the applicants which are serious in nature and that the applicants are named in an offence which is against the society, the concession of anticipatory bail ought not to be given to them. It is submitted that the applicants had move an application for grant of anticipatory bail before the Sessions Court which was dismissed by the learned Additional Sessions Judge vide an order dated 22nd November,

2016.

9. Hearing upon learned counsel for the applicants at length and going through the records including the FIR lodged, it is the specific allegation of the complainant in her complaint lodged with the police, that the applicants used to torture the deceased and beat her frequently for dowry despite meeting their dowry demands. It is also the specific allegation of the mother of the deceased that her daughter was administered something which caused the death of her daughter and that the same was given by her husband, mother-in-law & father-in-law.

10. Contention of the applicants with regard to their non-presence at the spot at the time of consumption of poison is concerned, it is a matter of record that the case in hand is a case of dowry death which does not warrant the presence of any of the accused as cases of dowry death are based on circumstantial evidence. The plea of non-presence is a matter of evidence which could be established during the trial.

11. For granting anticipatory bail to the person against whom the allegations are levelled, the factors that need to be taken into consideration while dealing with anticipatory bail, are; (a) The nature and gravity of the offence and the exact role of the accused must be properly comprehended before arrest is made; (b) The

possibility of the applicant to flee from justice; (c) The possibility of the accused's likelihood to repeat similar or other offences; (d) 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; (e) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and unless there are peculiar and special facts and circumstances in a given case, the Court would not be justified in extending the benefit of anticipatory bail to such a person.

12. In view of the specific allegations made in the complaint as well as the nature and gravity of the offence which involves the death of a young girl that too within the span of seven years of her marriage, this court is of the considered opinion that this case is not a fit case for the grant of anticipatory bail to the applicants. The same is rejected. Consequently, the present bail application is dismissed.

13. Before parting with the above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.

With the aforesaid directions, the present bail application is disposed of.

(P.S.TEJI)
JUDGE

DECEMBER 05, 2016
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