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

+ **BAIL APPLN. 2486/2016**

VISHAL SHARMA

..... Petitioner

Represented by: **Mr. Mukesh Kalia and Mr.
Akshay K. Verma, Advocates.**

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: **Ms. Rajni Gupta, APP for the
State with Inspector Anant, PS
Sabzi Mandi.
Mr. Pawan K. Jain and Mr.
Deepak Tyagi, Advocates for
the complainant.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

21.12.2016

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1. By the present petition the petitioner, who is the husband of the deceased Monica Sharma, seeks anticipatory bail in case FIR No.338/2016 under Sections 406/306/304B/498A/34 IPC registered at PS Sabzi Mandi on the complaint of Anjana Aggarwal, the mother of the deceased.
2. Learned counsel for the petitioner contends that Section 304B IPC has been wrongly invoked in the FIR as there is no allegation of demand of dowry. Further there was no harassment from the side of the petitioner rather the deceased was being harassed and taunted by her mother and other relations due to which she committed suicide at her parental house. Even taking the allegations of the complainant on their face value, a threat to

divorce or desert the wife cannot be an abetment to suicide. Reliance is placed on the decisions reported as MANU/SC/0001/2010 Gangula Mohan Reddy vs. State of Andhra Pradesh and MANU/SC/0161/2011 M. Mohan vs. The State, through Deputy Superintendent of Police.

3. Learned APP for the State on the other hand relying upon the decision reported as MANU/SC/0161/2011 Milind Bhagwanrao Godse vs. State of Maharashtra & Anr. contends that in a case of continuous course of harassment to desert the wife, it is sufficient to attract the offence punishable under Section 306 IPC and from the allegations noted in the complaint, in the statements of the witnesses recorded under Section 161 Cr.P.C., ingredients of Section 306 IPC are made out. The offence being serious in nature, no anticipatory bail can be granted to the petitioner.

4. In the complaint, on the basis of which FIR was registered, Anjana Aggarwal stated that she was resident of Sabzi Mandi and had gone to Dubai to her son Vipul Aggarwal's place and came back to Delhi on 23rd February, 2016. She stated that her husband passed away in September, 2014 and due to the problems caused by the petitioner she had to come back to India. The petitioner used to state to the complainant that he could not live with her daughter, she should call her back and that he would give divorce to her. She further stated that her daughter Monica Sharma got married to the petitioner on 25th November, 2012 at Delhi and over the past one year the petitioner was torturing her and demanding dowry. On 9th November, 2016 first of all Vishal sent back the bed given in the marriage and then stated that he could not keep her daughter with him so she should take her away. On 10th November, 2016 at around 4.00 PM the petitioner dropped Monica near her house and left away. He did not let her daughter bring anything along.

She also made to part with her two year old daughter. The petitioner also retained the mobile phone of the deceased. The complainant further alleged that on 11th November, 2016 the petitioner and his mother made a phone call to her wherein the petitioner asked the complainant to transfer her share in the house in the name of his wife and disown her son Vipul Aggarwal from the property. They also insisted that the complainant should sever her relationship with her son Vipul Aggarwal. The complainant stated that due to threats of the petitioner she was so tensed that she left the house wanting to die however, could not muster the courage and went to her sister's place. Later she was informed that her daughter had committed suicide by jumping from the second floor.

5. A perusal of the allegations in the FIR reveals that the petitioner demanded from the complainant that she should transfer her share in the ancestral house in the name of the petitioner's wife. Thus at this stage prima facie it cannot be said that there is no demand for dowry and no case for invoking Section 304B IPC was made out.

6. As regards the legal position with regard to whether expressing desire to a woman that the husband wants to take divorce from her or desert her would amount to abetment of harassment is well settled. Ordinarily, one or two instances of asking or even compelling to take divorce or desert would not amount to abetment however, when there is continuous course of harassment to the woman and on the threat of taking divorce or desertion she is made to perform various acts and the threats exceed to the extent that she is not even permitted to be with her children, it cannot be said that no case for abetment of suicide is made out. In the decision reported as Gangula Mohan Reddy (supra) relied upon by the learned counsel for the petitioner,

the appellant therein was harassing the deceased who was working as a servant by levelling allegations that two days prior to his death the deceased had committed theft of some gold ornaments and demanded ₹7,000/- from the deceased which was given in advance to him at the time when he was kept in the employment. Thus the Hon'ble Supreme Court held that since Section 306 IPC requires an active act or direct act which led the deceased to commit suicide seeing no option and the act must have been intended to push the deceased into such a position that he committed suicide, was not attracted and hence acquitted Gangula Mohan Reddy.

7. In M. Mohan (supra) the allegations were that the appellant therein was living in a joint family with his elder brother who owned a car and the deceased felt hurt when she was not allowed to use the said car and was taunted to get a car from her parental home if she wished to travel by car.

8. It is thus apparent that if there are stray instances which are not of a kind which would drive a person of ordinary prudence, not too sensitive Section 306 IPC is not attracted.

9. In Milind Bhagwanrao Godse (supra) the Supreme Court while dealing with the continuous course of harassment to a woman where she was given regular threats of divorcing her on the instance of even delay in withdrawing money or shortage of vegetable etc. upheld the conviction under Section 306 IPC.

10. Though learned counsel for the petitioner has urged that the deceased committed suicide in view of the demand raised by the family of the deceased or that a suicide note was recovered which has been withheld however, there is no material on record to substantiate the same.

11. Considering the nature of allegations this Court finds no reason to grant anticipatory bail to the petitioner.
12. Bail application is dismissed.

MUKTA GUPTA, J.

DECEMBER 21, 2016

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