

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1685 of 2017**

Pappu Gabel S/o Shri Mahadev Gabel, Aged About 25 Years R/o Village Beejatrai, Chowki FASTERPUR Police Station City Kotwali, District Mungeli Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Police Station City Kotwali, District Mungeli Chhattisgarh

---- Respondent

For applicant	Mr. Dheerendra Pandey, Adv.
For Respondent/State	Mr. Neeraj Mehta, PL.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****28-6-2017**

1. Heard finally.
2. The applicant has preferred this application for grant of bail as he is arrested on 15-8-2016 in connection with Crime No. 391/2016 registered in PS City Kotwali, Distt. Mungeli for offence punishable under Section 304-B and 302/34 of the Indian Penal Code, 1860.
3. Learned counsel for the applicant submits that after investigation charge sheet has been filed before Additional Judge to the Additional Sessions Judge, Mungeli as ST No. H-73/2016. He submits that there are total 3 accused persons. Father of accused namely Mahadev Gabel was granted bail by the coordinate bench of this Court vide order dated 24-1-2017 in MCRC No. 8217/2016. Mother of applicant namely Nand Kumari Gabel was granted bail vide order dated 28-2-2017 in MCRC No. 937/2017 by the coordinate bench. Case of the present applicant is similar to that of father and mother. The applicant is married to deceased Arti Gabel in the year 2015 about a year prior to the date of incident. As per post mortem report, it is a case of suspected poison. Place of incident is house of the applicant where

the deceased was living with him. As per statement recorded under Section 161 of the Cr.P.C. of Dr. Sanjay Agrawal, on 9-8-2016 the deceased came to him in the hospital and complained of redness in the leg. She was examined, no fracture was noticed. She was given treatment and thereafter she herself on 11th August, 2016 admitted in the hospital of one Dr. Prashant Dwivedi at Bilaspur. He submitted that the statement of the witness is of no relevance in the matter. At the most case of the applicant would fall under Section 498A of the IPC. The applicant had no personal knowledge regarding the incident and as other co-accused have been granted bail by the coordinate bench, the present applicant may also be enlarged on bail.

4. Per contra, learned counsel for the State opposes the arguments advanced by learned counsel for the applicant on the basis of the statement recorded under Section 161 of the Cr.P.C. of father of deceased Gokaran regarding assault, marpeet, demand of dowry of Rs. 1 lac to purchase a motorcycle. Also said facts are supported by the statement of Prembai, Pukhraj and Prahlad. Learned counsel for the State submits that instant MCRC may be dismissed in view of above.
5. Perused the entire material.
6. As the death of the deceased occurred within one year from marriage, provisions of Section 113B of the Indian Evidence Act, 1872 are attracted. For relevance said provision is reproduced hereinbelow :

"113-B : *Presumption as to dowry death* - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation - For the purposes of this section 'dowry death'

shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

7. The applicant is husband. The case of the husband is not similar to other co-accused persons who are granted bail. Also there may not be any direct evidence, and in the light of Section 113B of the Indian Evidence Act, 1872 specially provided by the statute, as there are evidence regarding torture and other facts admissible as per law, whatever statement recorded by the police during investigation under Section 161 of the Cr.P.C, this Court is prima facie of the view that there is sufficient material against the applicant regarding his involvement in the dowry death.
8. On due consideration, this Court is of the view that the case of the applicant is not similar to that of his father and mother. His case is distinguishable. Looking to the grievousness of offence in which a bride within a year lost her valuable life, I am not inclined to grant bail to the present applicant.
9. Consequently, instant MCRC is dismissed.

Sd/-
(Chandra Bhushan Bajpai)
Judge