

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5944 of 2017**

- Dabir Khan, S/o Late Mohd. Alim Khan, Aged About 45 Years, R/o Noorani Chowk, Pandri Road, Rajatalab, Raipur, Civil & Revenue District Raipur, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh, Through Police Station Kanker, Civil & Revenue District Kanker, Chhattisgarh.

---- Respondent

For Applicant : Shri Adil Minhaj, Advocate
 For Respondent/State : Shri Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****11.10.2017**

Heard the matter finally.

2. Learned counsel for the applicant would submit that the applicant has been arrested in connection with Crime No.260/17 on 10/08/2017, Police Station Kanker, Distt. North Bastar, Kanker (C.G.) for the offence under Section 306 of the Indian Penal Code.

3. Learned counsel for the applicant would submit that after investigation police had filed charge-sheet which is presently pending before the Additional Sessions Judge (FTC) North Bastar, Kanker (C.G.) as Sessions Trial No.24/17. Learned counsel for the applicant would submit that the marriage performed between the applicant and the deceased on 26/04/2008, out of the Wed Lock, there is one male child who is aged about 3 years and presently living along with his maternal grand mother and grand father. It is

alleged that on account of torture, cruelty and demand of dowry of Rs.5,00,000/-, the deceased committed suicide by hanging herself on 31/07/2017. There is no suicidal note in the matter, as the death occurred after 7 years of marriage. With this the provisions of Section 113A of the Indian Evidence Act, 1872 is not attracted. There is no material to demonstrate, whether the applicant abated for commitment of suicide as required under Section 107 of the Indian Penal Code. With this prima-facie, he cannot be held as abater for committing suicide, trial may take some time, he may be enlarged on bail and also submits that about more than 3 months prior to the suicide. The deceased was residing along with her father and mother at Kanker (C.G.).

4. Per Contra, learned counsel for the respondent/State opposes the arguments advanced on behalf of the applicant would submit that continuously the applicant was demanding Rs.5,00,000/- from the deceased and also committing cruelty and maar-peet. With this the deceased had no option but to take shelter with her father and mother. The applicant was also came there and demanded money and committed cruelty, hence looking to the entire facts surfaced in the instant MCRC may be dismissed.

5. Perused the entire matter.

6. As the applicant is in custody since 2 months 1 day till date, charge-sheet has been filed, trial may take some time, there is no earlier complaint regarding cruelty or demand of dowry against the applicant to the police, as the marriage has been performed more than 7 years, the provisions of Section 113A of the Indian Evidence

Act, 1872 is not attracted. On perusal of the entire material collected, it does not indicate the fulfillment of any requirement under Section 107 of the Indian Penal Code for the abatement of a thing, though the ailment of committing cruelty or a demand of dowry is surfaced. There is no suicidal note left by the deceased, upon consideration of the entire facts, I am inclined to grant one opportunity to the applicant that he shall not commit any offence in future and shall remain peacefully in the society without committing any crime.

7. Consequently, the instant MCRC is allowed.

8. The applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- with two solvent sureties of Rs.25,000/- to the satisfaction of Trial Judge for his appearance before the said Court regularly as and when directed by the said Court.

9. It is made clear that this order granting bail to the applicant shall stand cancelled automatically without reference to the bench by the Court below if (i) the trial Court finds that the applicant suppressed filing or pendency of any other application for grant of bail before this Court or the Hon'ble Apex Court intentionally; (ii) the applicant does not cooperate in the trial; (iii) the applicant is found to be involved in any offence of the like nature; (iv) the trial Court finds that the applicant remains absent without any sufficient and cogent reason. If bail is cancelled automatically in view of above, the Court below may proceed further under the provisions of law under intimation.

10. Certified Copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge