

\$~14 & 16 (*common order*)

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

+ **BAIL APPLN. 27/2019**

MRS. ABHA/ASHA NAUTIYAL Petitioner

Through: Mr. Rajeev Wassan, Advocate

versus

STATE Respondent

Through: Mr. Kewal Singh Ahuja, APP for the
State with Insp.Sahi Ram, PS Ranhola
Mr. Jay K. Bhardwaj, Adv. for R-2
with complainant in person.

+ **BAIL APPLN. 32/2019**

JITENDER NAUTIYAL/PRASAD Petitioner

Through: Mr. Rajeev Wassan, Advocate

versus

STATE Respondent

Through: Mr. Kewal Singh Ahuja, APP for the
State with Insp.Sahi Ram, PS Ranhola
Mr. Jay K. Bhardwaj, Adv. for R-2
with complainant in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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09.01.2019

CrI.M.A.252/2019 (exemption) in BAIL APPLN. 27/2019

CrI.M.A.285/2019 (exemption) in BAIL APPLN. 32/2019

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

BAIL APPLN. 27/2019 etc.

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Allegations have been made against the petitioners in the first information report (FIR) No.246/2017 registered by Police Station Ranhola of Outer District of Delhi for offences punishable under Sections 498-A/304-B IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961. The FIR was registered on the basis of statement of Ghanshyam son of Brahmi Dutt resident of State of Uttarakhand. The case involves death in suspicious circumstances of Pooja Devi, daughter of the first informant Ghanshyam. Pooja Devi was married to Shelender Nautiyal resident of Village Doban in Uttarakhand on 24.11.2012. It appears she was living with her husband Shelender Nautiyal in Delhi. The petitioner Jitender Nautiyal is brother of said Shelender Nautiyal while the other petitioner Abha @ Asha Nautiyal is the wife of said Jitender Nautiyal, they thus being *jeth* and *jethani* of the deceased woman.

It appears from the status report, copy of the FIR and other documents on record that the death of Pooja Devi came to light sometime around 7:00 a.m. on 04.08.2016. Shelender Nautiyal is stated to have given a phone call to Ghanshyam (father of the deceased) whereupon, on his instructions, his son visited the house and found the woman to have died. It appears the matter was not reported to any authority in Delhi nor the woman taken to any medical facility. Instead, the dead body was immediately shifted to the village Doban in State of Uttarakhand. It appears this fact came to the notice of local police of State of Uttarakhand, which registered zero FIR (No. 0003/2016) in Police Station Bayar Gaon on the statement of Ghanshyam.

In the said FIR, which was later converted into FIR No.246/2017 by Delhi Police, allegations have been made by the father of the deceased expressing suspicion that Pooja Devi had been intentionally killed. Allegations were also made about she having been subjected to harassment on account of illicit demands for dowry, acts of commission and omission being attributed, amongst others, to the two petitioners before this court.

The learned Additional Public Prosecutor submitted, on the basis of instructions and the police file that the dead body of Pooja was subjected to post-mortem examination in District Hospital Bauri, New Tehri (Uttarakhand) on 05.08.2016. A copy of the post-mortem report has been shown and it is noted that the autopsy doctor was unable to formulate final opinion as to the cause of death and, therefore, preserved the viscera for chemical analysis. On being asked, the Additional Public Prosecutor informed the court that the viscera remained in custody and control of the Uttarakhand police till it was moved to Delhi on 28.06.2018 and was eventually sent to forensic science laboratory (FSL) Rohini on 02.07.2018. The result is still awaited.

It may be noted here that as per the observations recorded in the autopsy report, amongst others, it was noted that there were blisters present all over the body, at places with some foul smell, some fluid oozing out of the mouth and nose of the deceased. In the FIR, the first informant (father of the deceased) had alleged that he had noticed blood oozing out of face of the deceased and she bearing signs of physical hurt.

The petitioners apprehend arrest and have approached this court seeking anticipatory bail on the ground there is no case made out against

them of any complicity in the crimes which are subject matter of the FIR. Reliance is placed by them on a compromise entered upon by Ghanshyam (father of the deceased) with Shelender Nautiyal (the husband) on 03.10.2018. It is pointed out that the father of the deceased is also present in the court with his counsel, it being submitted on his behalf that the petitioners had no role to play in the unnatural death of Pooja.

It is a matter of shock and deep concern for this court that a case of unnatural death of a married woman with no plausible explanation for the said sudden event is being handled by all agencies in a very casual manner. It is strange that the viscera which was preserved on 05.08.2016 was kept unattended till it was shifted to Delhi in June, 2018. It is strange that there is no sense of urgency on the part of any agency to expedite the analysis of the viscera on the conclusions in which respect the future course of investigation might rest. It is strange that in the absence of any explanation till date for the physical injuries possibly suffered by the deceased, - as reflected by the FIR and the post-mortem examination report – the case is being treated only as a case of dowry death. It is also a matter of concern that while the police agencies are taking their own leisurely time in carrying out the probe, efforts have already been made to influence the first informant, this being reflected by settlement dated 03.010.2018 on which reliance is placed. It is strange that father of the deceased who had suspected foul play, expressing doubts that his daughter had possibly been killed, is present in the court, apparently at the instance of the suspects, to say that he now does not have any reason to doubt their complicity, this without the probe being completed.

In the above facts and circumstances, no case for release on anticipatory bail is made out.

Both the petitions are dismissed.

It is directed that the investigating agency shall probe the matter from all angles including the aspect of possibility of it being a case of culpable homicide. Needless to add, the supervisory police officers will ensure that there is no further delay in analysis of the viscera. All suitable steps to ensure an early report by FSL shall be taken, if required, through the intervention of the jurisdictional magistrate. The DCP of the concerned District shall himself be responsible for supervision of the further investigation.

The investigation will also include inquiry, and suitable action, into the reasons why the viscera remained unattended for such a long period, irrespective of the fact where the accountability lies i.e. whether on the part of the police personnel of State of Uttarakhand or of Delhi Police.

The Metropolitan Magistrate having jurisdiction will call for an action taken report in light of these directions from time to time and also issue further directions, as may be deemed necessary.

A copy of this order shall be sent to all concerned.

Dasti under the signature of Court Master.

R.K.GAUBA, J.

JANUARY 09, 2019

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