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

Date of decision: 27.08.2019

+ CRL.M.C. 4208/2019

MRS. TABASSUM

..... Petitioner

Through Mr. Kapil Sankhla with Ms. Meghna
Sankhla, Advocates.

versus

STATE OF NCT DELHI & ANR.

..... Respondents

Through Mr. Panna Lal Sharma, APP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby cancelling anticipatory bail and arrest of accused in the case bearing FIR no. 181/2019 registered at Police Station Fatehpur Beri for the offences punishable under sections 304B/498A/34 IPC.
2. Petitioner is the sister of victim who committed suicide on 14.05.2019. The present petition is filed on the ground that the learned Additional Sessions Judge granted anticipatory bail to the respondent/accused on factually incorrect and legally perverse grounds.
3. The respondent/accused had failed to join the investigation and was absconding, consequently, proceedings under Section 82 Cr. P. C has been

initiated. The bail has been granted primarily on the ground that the accused is aged about 67 years and thus a senior citizen.

4. Learned counsel for the petitioner submits that learned ASJ failed to direct the IO to investigate/ make enquiry on this material aspect and thus was misled by the accused who filed a false affidavit to the effect to procure the Anticipatory Bail. Whereas actual age of the accused as per the voter list is 55 years as on 2019. This fraud has been played by the accused to procure the Anticipatory Bail which has led to polluting the stream of justice and has caused gross miscarriage of justice.

5. To strengthen his argument, learned counsel for the petitioner had relied upon case of *Lavesh vs. State (NCT of Delhi): (2012) 8 Supreme Court Cases 730* whereby the Hon'ble Supreme Court has held that normally when the accused is absconding and declared as proclaimed offender, there is no question of granting anticipatory bail.

6. Learned counsel for the petitioner further submits that there are specific allegations against the respondent/accused of cruelty against the deceased and that fact has been ignored by the learned additional sessions judge who had granted anticipatory bail.

7. On perusal of the impugned order, learned judge recorded that FIR in

the case was registered on 17.05.2019 on the basis of statement of deceased's sister namely Tabbasum recorded by the SDM.

8. As per the FIR, the allegations are that the husband of the deceased used to subject her to physical beatings as he was having illicit relationship with his sister in law (Bhabhi) Shabnam and whenever deceased raised objection, he used to beat and taunt her that deceased had not brought sufficient dowry in her marriage and used to ask her to bring property and money from her parents. Even the sister in law of the deceased's husband namely Shabnam used to say that if deceased's husband had married to her sister, he would have at least got a big car and ₹20-25 lakhs in the marriage. When deceased informed her mother in law and father in law about relations of her husband with Shabnam, they did not pay any heed and instead threatened her not to malign their family's reputation. There are allegations to the effect that despite deceased's parents had given sufficient dowry and Baleno car in her marriage, her in laws used to ill treat her. After birth of a girl child to the deceased, deceased was harassed for not giving birth to a male child.

9. In the FIR, the complainant has referred to an incident of 13.05.2019 saying that in the night at 10 pm, her sister Reshma i.e. deceased had

telephoned her and informed that “*she has a misfortune as whenever she says anything to her husband he subjects her to beatings and never desist from his said conduct*”.

10. Even on 15.05.2019, when the complainant allegedly received a phone call from deceased's husband, she was informed that a quarrel was going on between deceased and her husband on the issue of Shabnam and complainant asked deceased's husband to counsel Reshma and not to quarrel with each other. After 15-20 minutes of said call, deceased made a call to the complainant and told her that there was a fight on the issue of Shabnam and the complainant also heard mother in law of deceased shouting in the back '*kyo hamei badnam karna chahte ho*'.

11. After recording of above facts learned Trial Court has observed that on perusing the contents of statement of mother of deceased which was recorded by the SDM on 17.05.2019, wherein the mother has alleged that the husband of the deceased used to beat her at the instigation of his mother and sister in law (jethani). She further alleged that mother in law also used to quarrel with the deceased on petty issues. Considering the aforesaid allegations the learned judge opined that cause of quarrel which allegedly occurred between deceased and her in-laws on the date of her death was the

alleged relations of her husband with his sister-in-law Shabnam. The allegations relating to dowry demand and cruelty raised against the applicant are vague, general and unspecific. It is further observed that as per the IO, the husband and the father in law of the deceased are in JC and they had themselves surrendered before the police on 31.07.2019. Learned judge further observed that as per the PM Report No.59/129 and the subsequent opinion given on the same, the cause of death is asphyxia due to antemortem hanging and except the ligature mark found on the neck of the deceased, no other marks of external injuries were found on other parts of the dead body. Accordingly learned judge had granted anticipatory bail to the respondent/accused.

12. As pointed out by the learned counsel for the petitioner that respondent filed a false affidavit stating therein that the accused is a senior citizen of more than 65 years of age, though the learned judge has considered the aforesaid fact while granting bail, however, the same is no ground. However, it is the statement of the complainant and as per the allegations recorded in the FIR, learned Judge has granted bail.

13. In view of the above, the case relied upon by the counsel for the petitioner titled as *Lavesh vs. State (NCT of Delhi)* (*supra*) is not applicable

for the reason that the accused was declared as Proclaimed Offender and anticipatory bail was granted during the pendency of the same. This court has perused the order dated 06.08.2019 passed on application filed by the IO whereby learned Trial Court sought initiation of the proceedings under Section 82 Cr.P.C against the respondent/accused and other accused persons.

14. Accordingly, it is revealed that learned ASJ was satisfied with the contention of the application that the accused persons were intentionally/deliberately evading their arrest. Accordingly, IO was directed to issue proceeding under Section 82 Cr. P.C and proclamation be published in daily newspaper i.e. “*Nav Bharat Times (Hindi)*” and “*Hindustan Times (English)*” having circulation in the area.

15. The aforecited judgment by the learned counsel for the petitioner is not applicable in the facts and circumstances of the case because in the present case the respondent/accused has not been declared proclaimed offender and, that stage will come subsequently after publication of the same in the newspaper, specific order shall be passed by the Trial Court declaring the accused as ‘*Proclaimed Offender*’.

16. In view of the above, I find no illegality and perversity in the impugned order and, accordingly, the present petition is dismissed.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 27, 2019
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