

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70227 of 2019

Arising Out of PS. Case No.-3 Year-2017 Thana- C.B.I CASE District- Patna

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FIROJ AHMAD Son of Md. Saiyum Resident of Village-Ward No.11 (Langra chowk) Nagar Panchayat Jhanjharpur, P.S.-Jhanjharpur, District-Madhubani, at present residing at A/p Block-B, Road-1, Jayanti 3E Park, Vastubihar, Phase-II, P.S-Gobindpur, District-Dhanbad(Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Central Bureau of Investigation, Patna, Bihar Patna
3. Md. Mahatab Alam Son of Noor Alam Resident of Stadium Road, Ward No.22, P.S.-Madhubani, District-Madhubani.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Yogesh Chandra Verma (Sr.Advocate)
For the Opposite Party/s : Mr.Kumar Veerendra Narayan

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

12 07-07-2020 Heard learned counsel for the parties.

This application for regular bail arises out of CBI/SCB/PATNA P.S. Case No. 3 of 2017, disclosing offences punishable under Sections 498A, 363, 368 and 34 of the Indian Penal Code. Subsequently the final report no. 4 of 2019 has been submitted under Section 120B, 304B, 364, 498A, 344 and 201 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act.

The petitioner is the husband of the alleged victim. There does not appear to be any dispute that the victim was married to the petitioner on 15.01.2006. The F.I.R. was registered by the



brother of the victim on 02.11.2014. The informant alleged in the F.I.R. that the in-laws of the victim were persistent and consistent in making demand for dowry. The victim was residing at her parental home, when the younger brother of the petitioner had taken her for the matrimonial home on 26.07.2007. The informant alleged in the F.I.R. that for the last seven years, the in-laws of the victim did not give to the informant any concrete information about her whereabouts and the petitioner apprehended that she might either have been unlawfully confined somewhere or in the pretext of taking her to a foreign country, he had been subjected to some unknown evil act. There was certainly no specific allegation in the F.I.R. of the death of the victim, though allegation of demand of dowry, cruelty and harassment at the hands of the in-laws of the victim was specific.

The petitioner's brother-in-law, who was also made an accused, had approached this Court for grant of anticipatory bail giving rise to Cr. Misc. No. 42803 of 2016. This Court noticed, while hearing the said anticipatory bail application, that the father and mother of the petitioner had earlier approached this Court for grant of anticipatory bail and in their application they had taken a plea that the victim was residing with the petitioner



in Netherland. This fact was found to be false in course of investigation by the police after having examined the passport of the victim. As regards the petitioner, the police investigation had revealed that though the petitioner had made several foreign trips and at some point of time had visited Bengaluru. Considering procrastination in the investigation by the State police and the nature of investigation, which the case needed, this Court, while rejecting anticipatory bail application of the brother-in-law of the petitioner by an order dated 11.11.2016 directed for an investigation by the Central Bureau of Investigation. Relevant portion of the said order reads thus:-

“In view of material in the case diary, it is evident that in this case investigation is required to be conducted at different places even beyond the territorial jurisdiction of State of Bihar which includes Bangalore and some foreign countries and with a view to know whereabouts of victim lady, the Court feels that it would be necessary to get the matter thoroughly investigated by the Central Bureau of Investigation (C.B.I.). Learned Counsel for the informant as well as learned Addl. Public Prosecutor are required to inform Sri. Bipin Kumar Sinha, learned Standing Counsel for C.B.I. to appear on 21st of November, 2016.”

The petitioner was apprehended by the CBI on 18.04.2019 in Bengaluru. In course of search, after his arrest on



18.04.2019, the petitioner was found in possession of two sets of PAN Cards, Voter Ids and Aadhar Cards, one in the name of Syed Umair and the other in the name of Feroz Ahmad. It has come in course of investigation that the petitioner was residing in Bengaluru for several years with his pseudo name Syed Umair. It further transpired in course of investigation that the petitioner served in private companies with his pseudo name Syed Umair.

The petitioner is said to have given his confessional statement before the C.B.I., in the presence of independent witnesses to the effect that in January 2008, the petitioner, his family members and the victim had quarrelled with each other whereafter, the victim had consumed poison. The family members of the petitioner thereafter had called a compounder and subsequently a doctor for her treatment. Finding no chance for her survival, according to the confessional statement of the petitioner before the CBI, the victim was being taken to a hospital in Darbhanga. She, however, died midway, before reaching hospital. He is said to have disclosed the C.B.I. that fearing his implication in a criminal case, he dumped the dead body of the victim on the outskirts of Barh, on his way to Dhanbad. During the investigation, the petitioner was taken to



probable places, where the dead body was thrown according to his confessional statement. He, however, failed to identify the exact place, where he and his family members had disposed of the dead body of the victim.

It also appears from the case diary that the C.B.I. collected materials to suggest that petitioner had remained at Dhanbad for few months and after that had joined a company at Ludhiana and had left for abroad on 14.02.2009. The petitioner had disclosed his marital status as single in his service particulars furnished to the private companies in 2011 and 2014. It is noticeable that before leaving her parental home on 26.07.2007, the victim had left behind a detailed note at her parental house mentioning persistent demand of dowry by her in-laws and ill treatment at their hands. The handwriting on the said note was compared with the admitted signature of the victim, which confirmed that the note was written in the victim's handwriting, in view of a report of the C.F.S.L., Kolkata dated 21.03.2018.

One crucial aspect, which emerged in course of investigation, was that in order to conceal himself, the petitioner lived with a pseudonymous identity in the name of Syed Umair with altogether different identity proof namely PAN Card, Voter



Id Card and Aadhar Card. These are briefly the materials collected in course of investigation on the basis of which, charge sheet has been submitted.

Mr. Yogesh Chandra Verma, learned Senior counsel appearing on behalf of the petitioner has submitted that for constituting an offence under Section 304B of the Indian Penal code, death of victim is the most essential ingredient. He contends that on the basis of what is alleged in the F.I.R., no offence under Section 304B of the Indian Penal Code can be said to be made out in the absence of allegation that there was demand of dowry soon before the death of the victim, in the absence of allegation that the victim had died. He has further submitted that the question of presumption of commission of offence under section 113B of the Evidence Act would arise, only if the primary burden of making out a case that the victim was subjected to cruelty or harassment for or in connection with any demand for dowry is discharged. He has contended that the petitioner's conduct of having retended to conceal his identity by living in Bengaluru with a different name shall not give any credence to the case of the prosecution constituting offence under Section 304B of the Indian Penal Code. He has also submitted that lodging of the F.I.R. after nearly more than six



years of the alleged date of occurrence is itself a sufficient ground for doubting the allegations made in the F.I.R. by the first informant. He has contended that it is highly improbable that the informant would not be in touch with his sister for long seven years and would not report to the police in this regard, in the background of the allegation that she had left behind a note alleging demand of dowry by her in-laws and harassment therefor at their hands.

I have carefully gone through the case diary and the material collected in course of investigation by the Central Bureau of Investigation. There is allegation of demand of dowry and subjecting the victim to cruelty and harassment for non-fulfilment therefor. I do not find much force in submission made by Mr. Yogesh Chandra Verma that the F.I.R. and materials collected in course of investigation do not constitute offence punishable under Section 304B of the Indian Penal Code. The C.B.I. has concluded in its investigation that the victim died in unnatural circumstance. It is difficult for this Court to accept the submission made on behalf of the petitioner while considering his application for bail that there was no demand for dowry and there were no cruelty or harassment meted out to the victim; if the fact that the victim had consumed poison and died while



being taken to the hospital is not to be completely brushed aside, it cannot be said that she was not subjected to cruelty or harassment by her husband or any relative of her husband “soon before” her death for constituting an offence punishable under Section 304B of the Indian Penal Code.

In my opinion, therefore, the petitioner’s conduct of concealing his identity and living in the country with pseudonymous identity has made it more difficult for him to have the privilege of bail. Though the petitioner is in custody since 19.04.2019, considering the gravity of the offence and the manner in which, the petitioner conducted himself, subsequent to lodging of the F.I.R., in my view, the petitioner does not deserve the privilege of bail. This application is accordingly dismissed for the present.

The Court below is directed to ensure that the trial is expedited and concluded as early as possible, preferably within six months. If there is no substantial progress before the Court below in the direction of conclusion of trial, the petitioner shall be at liberty to renew his prayer for bail after six months.

(Chakradhari Sharan Singh, J)

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