

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: July 09, 2020

+ BAIL APPLN. 633/2020

AMARKANT MAHTO

..... Petitioner

Through: Mr. Rajat Katyal, Adv. with
Mr. Shrey Sharawat, Adv.

versus

STATE

..... Respondent

Through: Ms. Meenakshi Dahiya, APP
Ms. Anita Sinha, Complainant.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (ORAL)

1. This application has been filed by the applicant under Section 439 Cr.PC for grant of regular bail in case FIR No.159/2018, registered under Sections 304B, 498A of the IPC, PS Delhi Cantt.

2. The subject matter of the allegation against the applicant is the death of his wife Sunny Kumari on July 11, 2018, who hanged herself. The statements of the father and mother of the deceased were recorded, who stated that the marriage was solemnized on March 10, 2017. After marriage, everything was fine for some period, but after one month, applicant and the deceased in-laws started taunting over the complexion of

deceased and demanded dowry from her. Thereafter, the deceased went to her parental house. After two months deceased husband took her to her matrimonial house at Koshi Dangi Bihar. At her matrimonial house, the applicant used to beat her, deceased conveyed all information regarding the harassment caused by the applicant to her parents telephonically. The parents of the deceased visited the matrimonial house of the deceased and exhort them to live peacefully. In February 2018, the parents of the deceased handed over rest of the dowry articles at her matrimonial house. It is also stated that the applicant asked the deceased for abortion otherwise passed threat for divorce. On July 13, 2018, the applicant was arrested.

3. It is the submission of Mr. Rajat Katyal, learned counsel for the applicant / petitioner that the FIR does not disclose the allegation of cruelty soon before the death, which resulted into the “*dowry death*” of the deceased. He states that the FIR as well as the charge sheet are full of contradiction. That apart, it is his submission that the statements of the complainant i.e. the mother of the deceased are vague in nature and the prosecution has not come forth with any documentary evidence or specific allegation vis-a-vis the demand of dowry or any other monetary transaction. He lays stress on the fact that the essential ingredients of offence under Section 304-B are missing and not even one single evidence can be attributed to the applicant. He has drawn my attention to the statements of the mother and father recorded in the trial to contend that the father of the deceased admitted that on July 10, 2018, the deceased informed him via

phone call at 10:12 pm that everything was cordial and there was nothing to worry about. He has also drawn my attention to the statement of the independent witnesses to contend that they have not corroborated any allegation of cruelty being inflicted upon the deceased at her matrimonial home at Koshi Dangi in Bihar. Instead they have stated that the applicant and his family members had cordial relations with the deceased.

4. According to him, for majority of the time, the deceased stayed with her mother at her home at Nangloi, Delhi and she had come to the house of the applicant in Delhi Cantt. only on July 04, 2018. It is not the case of the prosecution that between July 04, 2018 and July 10-11, 2018 i.e. the date of the incident, there was any allegation of demand of dowry by the applicant. Mr. Katyal stated that there was no ante-mortem injury mark present anywhere else on the body of the deceased, which signifies that no cruelty was inflicted upon the deceased before her death. He states that the Supreme Court in the case of *Manohar Lal v. State of Haryana (2014) 9 SCC 645*, held that the facts must show existence of proximate link between effect of cruelty based on dowry demand and death of victim. He also states that the applicant is neither a proclaimed offender nor a convicted person and has clear antecedent and is ready to face trial. He also states that all the public witnesses have been examined and only the official witnesses need to be examined and there is no question of any witnesses being influenced by the applicant.

5. On the other hand, Ms. Meenakshi Dahiya, Ld. APP for the State would submit that on July 11, 2018, on receipt of DD

No 5A, ASI Krishan along with staff reached at spot i.e. Air Force Govt. Quarter, 27/23, Wing Camp Area, IAFSR, Delhi Cantt, where over the floor, body of a female identity established as Sunny Kumari W/o Amar Kant Mehto was found lying. CATS Ambulance was also found at the spot and after inspection, the body was declared dead. At the spot one ligature (Chunni) piece, white colour was found lying next to the deceased body and one piece of ligature (Chunni) was found hanging over the wooden hanger fixed at the shed of Baramda. On enquiry, it has been learnt that deceased was found hanging at around 10:45 PM and was grounded after de-fixing the ligature (Chunni). The spot was got inspected from crime team and photographs were taken.

6. She states that the marriage of the deceased was found solemnized on March 10, 2017, accordingly SDM was informed in this regard. From the spot the exhibits and ornaments wear by the deceased were taken into police possession through seizure memo. The ornaments of the deceased were handed over to her mother reached at the spot. Deceased body was shifted to DDU Hospital, where on MLC No 6892/18, body was declared '*Brought dead*'. Statements of father and mother of the deceased were recorded. Scaled site plan of the place of incident was prepared. Post Mortem report of the deceased body was collected. The opinion regarding the cause of death was given as "*Deceased died due to asphyxia secondary to constriction of neck structures as a result of hanging. The ligature mark was fresh and ante mortem in nature*". The receipts of istridhan articles were verified and handed over to parents of the deceased

vide handing over memo of istridhan articles.

7. She would submit on July 13, 2018, applicant was arrested in the present case. Investigation was made to probe the role of in-laws of the deceased behind the crime, but no relevant information / evidence to substantiate the role of the in-laws of deceased came on record. The subsequent opinion on possibility of hanging from the Chunni and ligature mark as mentioned in the PM Report was obtained, the opinion given is as under *“Deceased died due to asphyxia secondary to constriction of neck structures as a result of hanging . The ligature mark was fresh and ante-mortem in nature”*. After completion of investigation charge sheet against the alleged husband has been filed before the Court on October 04, 2018. In substance, the submission of the Ld. APP for the State is that there is enough material to relate the death of the deceased to demand of dowry.

8. The complainant Mrs. Anita Sinha also appeared before the Court through video conferencing and she has also been heard. She has stated that the case is before this Court for it to decide the same.

9. Having heard the learned counsel for the parties and the complainant, it is clear that the deceased has passed away just after one year of the marriage. The presumption in law would apply, if it is shown that there was either cruelty or harassment coupled with a demand for dowry soon before the death of the deceased.

10. It is contended by Mr. Katyal that after staying for two months, the deceased had come to the matrimonial home on July

04, 2018 and the date of death is July 10-11, 2018 and there are no allegation that during that period, there was a demand for dowry. He has heavily relied upon the statements made by the father and mother of the deceased to contend, there is no dowry death.

11. The Court is not required to go into the merits and demerits of the contentions so advanced before me at this stage, and also the statements so relied upon by Mr. Katyal are not required to be analysed. The petitioner has been in custody for around two years. The charge sheet has been filed and even the trial has commenced. The public witnesses have been examined and only the official witnesses have to appear in the witness box. It is not expected, in view of the prevailing circumstances, the trial is going to be completed in near future.

12. In *Savita vs. State of Delhi (2019) 10 SCC 29*, which was a case under Section 498A and 304 B of the IPC, the Supreme Court after noting that accused has already been in jail for 27 months, granted bail to the accused.

13. Even recently in the case of *Yashpal vs. GNCTD, Bail Appln. No. 1340/2019 decided on May 27, 2019*, the learned Single Judge of this Court considering the fact that the details of the dowry were not given to the Investigating Officer and the fact that the trial was likely to take some time, granted regular bail to the accused.

14. Accordingly, this Court is of the view that the petitioner is entitled to be released on regular bail subject to the following conditions:-

- (i) The petitioner shall furnish a bail bond for a sum of Rs.1 lakh with one surety of like amount to the satisfaction of the Trial Court and be released on bail, if not required in any other case;
- (ii) The petitioner shall not leave Delhi without the permission of the Trial Court;
- (iii) The petitioner shall not contact any of the witnesses of the prosecution and directly or indirectly influence them;
- (iv) The petitioner shall also provide his phone number, phone number of surety as well as of his parents, which shall be kept on, all times to enable the Investigating Officer contact them, if required.

15. The bail application is disposed of, on the aforesaid terms.

16. The order be uploaded on the website of this Court.

V. KAMESWAR RAO, J

JULY 09, 2020/ak