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

+ BAIL APPLN. 2438/2020, CRL.M.A. 11915/2020 & CRL.M.A. 11916/2020

MADAN Applicant

Through: Mr.Rishipal Singh, Advocate.

Versus

STATE OF NCT DELHIRespondent

Through: Mr.Kewal Singh Ahuja, APP for State
with Insp. Pratap Singh.

+ BAIL APPLN. 2440/2020, CRL.M.A. 11918/2020 & CRL.M.A. 11919/2020

KRISHNA Applicant

Through: Mr.Rishipal Singh, Advocate.

Versus

STATE OF NCT DELHIRespondent

Through: Mr.Kewal Singh Ahuja, APP for State
with Insp. Pratap Singh.

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

%

31.08.2020

(hearing through Video Conferencing)

CRL.M.A. 11915/2020 & CRL.M.A. 11918/2020 (Ex.)

Exemptions allowed subject to all just exceptions.

The applications stand disposed of.

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BAIL APPLN. 2438/2020 & BAIL APPLN. 2440/2020

The applicants namely Madan Lal applicant of Bail Appl. No. 2438/2020 and Krishna applicant of Bail Appl. No. 2440/2020 are the brother -in-law and sister-in-law of the deceased i.e. the daughter of late Sh.Kastur Chand whose son Sh.Banwari Lal son of late Sh.Kastur Chand and who is the brother of the deceased is the complainant of the FIR No.102/2020, PS Subhash Place, seek the grant of anticipatory bail in relation to FIR registered under Sections 498A/304B/34 of the Indian Penal Code, 1860.

The advance notice has apparently been issued to the State and notice issued now is accepted on behalf of the State.

The status report of the State qua both the applications has been received through email along with the documents attached therewith.

Submissions have been made on behalf of either side.

In as much as, the allegations relate to the same alleged incident and relate to the brother-in-law and sister-in-law of the deceased, it has been considered appropriate to take up the applications together.

It has been submitted on behalf of the applicants that the FIR has been lodged with much delay and that there are several contradictions in the FIR itself. It has further been submitted on behalf of the applicants that the applicants were not living with the deceased and her spouse Sunil, in as much as, they were living on a separate floor, with it having been submitted on behalf of the applicants that there is not a whisper of the allegations against the applicants even in the statement of the mother of the deceased that has been attached along with the status report that has been submitted by the State. It has also been submitted on behalf of the applicants that the complainant has sought to implicate the applicants falsely and concocted a false story, in as much as, it is indicated that the FIR is well thought out with it having mentioned to the extent that there

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were contradictions in the statement of Madan Lal, the applicant of Bail Appl. No.2438/2020 as well as that of the statement made by Sunil, Sunil being the spouse of the deceased and that itself was an indication to the effect that the FIR was wholly planned. It has further been submitted on behalf of the applicants that in the initial statement made by the complainant before the SDM, there is not even a whisper of allegations whatsoever against the applicants.

On behalf of the State, it has been submitted that there is no unexplained delay in the instant case, in as much as, the incident is of the date 15.02.2019 and that the police had been called by Banwari Lal and that it has been observed vide proceedings dated 18.08.2020 before the learned Special Judge, POCSO, ASJ-05 at the time of the consideration of the Bail Appln. No.2298/2020 of the co-accused Moolchand i.e. the father-in-law of the deceased that the inquiry was pending before the concerned SDM for considerable time and that there was also some delay caused due to the negligence of the IO who at that time was facing a departmental enquiry.

It has further been submitted on behalf of the State that nevertheless, the FIR in the instant case was registered on 19.02.2019 and that the averments made in the complaint detailed the allegations levelled against the applicants. There are further circumstances that are submitted on behalf of the State to the effect that the MLC of the deceased indicates that the deceased was brought to the hospital by the applicant of Bail Appl. No.2438/2020 namely Madan Lal. It has been submitted further on behalf of the State that the allegations levelled against the applicants indicate to the effect that was a case of alleged hanging and in the event of there being an unnatural death, it was the duty of the applicants to have informed the police rather than having brought the body of the deceased to the hospital.

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It is indicated further through the MLC that the deceased was brought in emergency in Bhagwan Mahavir Hospital, Pitampura, Delhi on 15.02.2019 at 10.40 pm and that the applicant Madan Lal informed the complainant only at 11.30 pm and that the said aspect is contented by the State to be clearly one which incriminates the applicant Madan Lal wholly.

Furthermore, it has been submitted on behalf of the State that the applicants were present at their house at the time of the alleged commission of the offence and it has further been submitted on behalf of the State that the allegations that are levelled in the FIR itself indicate that the allegations levelled against the applicants are of serious nature.

Furthermore, it has been stated that through the FIR, it has been mentioned that there are scars and marks all over the body of the deceased and her sexual organs were swollen and it appeared that she was sexually assaulted/raped and beaten a lot before murdering. As regards this aspect, the Post Mortem report bearing No.148/2019 dated 17.02.2019 of the Department of Forensic Medicine, Dr.Baba Saheb Ambedkar Hospital makes no mention of any scars on the person of the deceased and also makes no mention of there being any sexual organs having been swollen and the post mortem report gives the cause of death as being anti-mortem hanging with the viscera having been preserved for detection of any intoxicant.

It has been submitted on behalf of the State that as per the averments made in the FIR, the minor child of the deceased namely Rishika was at the house of the applicants and that an explanation in relation thereto would have to be sought on behalf of the applicants.

Taking into account the factum that the applicants are stated to have been present in the house, though, they resided on a different floor from that of the deceased at the time of the alleged commission of the

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offence and at the time of the demise of the deceased, coupled with the factum that the applicants chose not to inform the police of the alleged hanging by the deceased and rather brought the body of the deceased straight to the hospital, are aspects which cannot be overlooked at this stage. Taking the said aspect into account, there is no ground whatsoever for the grant of anticipatory bail to the applicants.

The applications are thus, declined.

ANU MALHOTRA, J

AUGUST 31, 2020

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