

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25376 of 2021

Arising Out of PS. Case No.-108 Year-2020 Thana- TARARI District- Bhojpur

GAJ BHIMAL SINGH SON OF SHIV SINGH R/O VILLAGE-
KISANIDIH, P.S.- TARARI, DISTRICT- BHOJPUR.

... .. Petitioner.

Versus

The State of Bihar

... .. Opposite Party.

Appearance :

For the Petitioner	:	Mr. Rajani Ranjan Pd. Singh, Advocate.
For the State	:	Mr. Md. Mushtaque Alam, A.P.P.
For the Informant	:	Mr. Bhavesh Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

3 07-12-2021 The applicant/accused in Crime No.108 of 2020 registered with Police Station-Tarari for the offences punishable under Sections 304(B), 201 read with Section 34 of the Indian Penal Code by this application is seeking his release on bail during the course of the trial.

Heard learned counsel appearing for the applicant/accused. He vehemently argued that the recital in the F.I.R. itself shows that just a day earlier, deceased Prabhawati Devi was sent to her matrimonial house. She died on the next day according to the prosecution case. He further submits that the marriage, according to the prosecution, was solemnized in the year 2011 whereas the death occurred on 11.06.2020. Therefore, according to the learned counsel appearing for the



applicant, there is no question of application of Section 304(B) of the Indian Penal Code, i.e., dowry death, to the instant case. He submits that Section 304(B) of the Indian Penal Code is applied subject to only when married women dies on account of burns or other injuries in unnatural circumstances within seven years of marriage but in the case in hand, death is occurred after more than seven years. It is further argued that the dead body was not recovered by the police and, therefore, the applicant is entitled for bail.

Learned Prosecutor assisted by the learned counsel appearing for the informant opposed the application by pointing out the report of post-mortem examination.

I have considered the submissions so advanced and also perused the materials placed before me and also perused the case diary.

Though it is a job of the Investigator to file charge-sheet after collecting the evidence which is available during the course of the investigation by applying correct panel provisions of law, at the time of framing of the charge, it is also expected of the trial Judge to read the entire materials before him for framing the correct charge. Obviously, in the case in hand, there cannot be application of Section 304(B) of the Indian



Penal Code because the prosecution case is to the effect that the marriage was solemnized in the year 2011 whereas the death occurred on 11.06.2020.

Be that as it may, let I now examine whether this is a case in which bail can be granted to the applicant who happens to be the husband of the deceased Prabhawati Devi.

The averments made in the F.I.R. by the first informant are to the effect that after marriage of Prabhawati Devi with the present applicant, she was used to be subjected to cruelty for and on account of dowry. It is further averred by the informant-brother that as the deceased was not in a position to bear the child, she was subjected to cruelty by the applicant and his family members. It is also alleged that as the deceased could not bear a child from the applicant, the applicant performed second marriage in March, 2020 with another women named Kanti Devi. The F.I.R. itself shows that on 10.06.2020, Prabhawati Devi, who was at her parental house, was reached to the house of the applicant by first informant Ram Badan Singh. Ultimately, her dead body was found on 11.06.2020. The report of the post-mortem examination of the dead body of Prabhawati Devi shows that she died due to asphyxia . It is seen from her post-mortem examination report that she was strangulated to



cause her death. Ultimately, her dead body was found in a river. Prima facie, it seems to be case of custodial death. The deceased was in the company of her husband after she was reached to her husband's place by her brother. At this juncture, the provisions of Section 106 of the Indian Evidence Act becomes relevant.

Considering the nature of the allegation and the materials collected during the course of investigation, no case for grant of bail to the applicant is made out. Application is, therefore, rejected.

This Court hopes and trusts that the learned trial court shall frame the appropriate charge after going through the papers of the investigation in the case in hand.

(A. M. Badar, J)

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