

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.1309 of 2021

- Nimesh Tripathi, aged about 30 years, S/o Shri Falgo Prasad Tripathi, R/o Behind Golden Marbel, Laxmi Nagar, Police Station Tikrapara, District Raipur (CG)

---- Applicant (In Jail)

Versus

- State of Chhattisgarh, through Station House Officer, Police Station-Tikrapara, District- Raipur (CG).

....Non-applicant

For Applicant	:	Mrs. Fouzia Mirza, Sr. Advocate with Mr. Rahim Ubawani, Advocate
For Non-applicant	:	Mr. BP Banjare, Dy. Govt. Advocate

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

05.07.2021

1. This is first application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to applicant, who is in custody since 23.11.2020 in connection with Crime No.489/2020 registered at Police Station Tikrapara, District Raipur (CG) for commission of offence punishable under Section 304(B), 34 of the Indian Penal Code.
2. Case of the prosecution, in brief, is that present applicant was married to Shalini Tripathi (deceased) on 24.11.2019. After one month of marriage, Shalini Tripathi had conceived and gave birth to a male child Viraj. On 7.11.2020 at about 8.30 p.m. after some dispute, the deceased went to her bedroom and locked it from inside. After some time when the applicant heard cries of his child, he knocked the doors. Since the applicant did not get any response on knocking of door, he

broke open the door and found the deceased hanging by means of *saree* and was sobbing. Applicant and his father brought her down and took her to the hospital for treatment where during the course of treatment she died on 9.11.2020 at 11.35 p.m. After merging enquiry, FIR was registered on 22.11.2020 against the applicant and his parents for commission of offence punishable under Section 304B & 34 of IPC. Applicant was arrested on 23.11.2020 and since then he is in custody.

3. Mrs. Fouzia Mirza, learned Senior Counsel for the applicant would submit that prior to marriage, the deceased was working in Mumbai, but after her marriage she lost her job due to which she was upset. She further submits that the allegations levelled are mainly related to domestic disputes which occurred on account of inability of deceased to adjust herself at her matrimonial home. Allegation of demand of dowry is bald and omnibus. Referring to the statement of Smt. Pushpa Sharma, mother of deceased, recorded under Section 161 CrPC, she would argue that as per allegations levelled, initially the dispute took place when the applicant had asked the deceased to get her pregnancy aborted and thereafter just prior to the date of incident, for a trivial issue the deceased attempted to commit suicide. There is no whisper regarding cruelty or harassment due to demand of dowry soon before the incident. She further submitted that incident occurred on 7.11.2020 and the deceased died on 9.11.2020 at 11:35 p.m., but for the reason best known to the prosecution, the dying

declaration of deceased was not recorded. The police had also refused to seize handwritten letter of deceased wherein she has specifically mentioned that she herself is responsible for her attempt of suicide (Annexure A-4). Applicant has requested the police to seize the document/letter written by the deceased in the hospital as also CCTV footages of the hospital, but the same have not been seized by the police. Letter in this regard is written to the Senior Superintendent of Police on 17.11.2020 (Annexure A-3). The police has not conducted the investigation in a fair manner. Nothing wrong has been committed by the applicant or his family members. She submits that the applicant is in jail since 23.11.2020, charge sheet has already been filed, hence the applicant may be released on regular bail.

4. Per contra, Mr. BP Banjare, learned State Counsel opposes the submissions made by learned Senior Counsel for applicant and submits that there are specific allegations regarding demand of dowry, harassment and ill treatment of deceased by the applicant and his family members. At the time of marriage, the mother and sister of deceased took hand loan to arrange dowry. Referring to the statements of Smt. Pushpa Sharma, mother of deceased, Kirti Sharma, sister of deceased, and Anita Sharma, aunt of deceased, recorded under Section 161 of CrPC, submitted that there are specific allegations of demand of dowry and harassment against the applicant. He further submitted that prior to the incident, there was dispute between the deceased and the applicant & his

family members which made the deceased to commit suicide.

Hence, the applicant is not entitled for grant of regular bail.

5. I have heard learned counsel for the parties and perused the case diary.
6. Perusal of statements of mother & sister of the deceased would show that at the time of marriage, they have arranged money by taking hand loan from private person. After the marriage, as stated by mother of deceased, the dispute took place when the deceased conceived pregnancy. As per allegation, the applicant had asked the deceased to get the pregnancy aborted, but after her intervention the dispute was resolved. During her pregnancy the deceased fell sick, but her in-laws did not provide her proper treatment as a result she brought the deceased to her place of residence and provided her proper treatment. Thereafter, the deceased went back to her matrimonial home. At the time of delivery of child also, the deceased was brought by her and after delivery of child, the deceased again went back to her matrimonial home.
7. As per allegation, on the date of incident, the deceased informed over telephone that on trivial issue the applicant and his parents are raising dispute and assaulting her. The allegation of demand of dowry is bald and omnibus. There is no specific nature of demand alleged against the present applicant. Dying declaration of the deceased was not recorded in the hospital where deceased remained admitted from 7.11.2020 to 9.11.2020. In whatsapp chatting collected by the police there is no allegation of demand of dowry. Applicant is

in jail since 23.11.2020, after completion of investigation, the charge sheet has already been filed.

8. Taking into consideration the entirety of facts and material available on record, without commenting anything on merits of the case, I am inclined to allow this bail application.
9. Accordingly, the application is allowed and it is directed that applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court concerned on the conditions that;
 - a) he shall appear before the trial Court concerned regularly on each and every date unless exempted from appearance.
 - b) he shall not, in any manner, tamper with the prosecution witnesses.
 - c) If applicant is found involved in similar offence in future, it will be open for the State to apply for cancellation of bail.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-