

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

+ **BAIL APPLN.3422/2020**

Date of decision: 09th AUGUST, 2021

IN THE MATTER OF:

BILLO @ BILKISH

..... Petitioner

Through Mr. Jitender Sethi with Mr. Hemant
Gulati, Advocates

versus

STATE, NCT OF DELHI

..... Respondent

Through Mr. Amit Chadha, APP with SI
Shailendra Tiwari, PS Seelampur.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 438 Cr.P.C. is for grant of bail to the petitioner in the event of arrest in FIR No.209/2020 dated 20.05.2020 registered at Police Station Seelampur for offences punishable under Sections 498A/304B/34 IPC.

2. Brother (Rehan) of the deceased (Foziya) filed a complaint stating that his sister got married to one Sartaj @ Shahrukh R/o B-1, New Seelampur, near Jama Masjid, Seelampur, Delhi, on 26.01.2015. It is stated that initially everything was fine in the marriage but after four-five months of the marriage, the in-laws of the deceased started demanding dowry. It is stated that several times the mother of the deceased gave money to the in-laws of the deceased without disclosing it either to the father of the deceased or the complainant. It is stated that one Swift Car, 25 tolas of gold, one

motorcycle were given by the parents of the deceased to her in-laws as dowry and a good amount of money was spent on the marriage. It is stated that about six months before her death, the deceased had lodged a complaint against her husband Shahrukh. It is stated that the parents of the deceased had taken her back to their home. It is stated that pursuant to a settlement and on an assurance given by her in-laws the deceased was sent back to her matrimonial home. It is stated that 2-3 days before the incident, the deceased gave a phone call to her mother and stated that her husband would kill her and that they should come and take her away. It is stated that on 19.05.2020, at about 4:30 PM, the father-in-law of the deceased gave a phone call to the mother of the deceased and asked to her come and take her daughter away otherwise Shahrukh would kill her. It is stated that the complainant and his family tried to call the in-laws of the deceased but no one picked up the phone. It is stated that on the same day the co-brother of the complainant gave a call and stated that the condition of the deceased, Foziya, was very critical and that she has been admitted to ICU. It is stated that when the complainant and his family members reached the hospital they were informed that Foziya has passed away. On the said statement FIR No.209/2020 dated 20.05.2020, was registered at Police Station Seelampur for offences punishable under Sections 498A/304B/34 IPC.

3. The petitioner filed an application under Section 438 Cr.P.C seeking anticipatory bail before the Sessions Court which was rejected by the learned Special Judge (NDPS), North East, vide order dated 20.10.2020. Thereafter the petitioner has filed the instant application.

4. This Court *vide* order dated 09.11.2020 granted interim protection to the petitioner herein and directed her to join investigation as and when

called for by the SHO. Status Report has been filed.

5. Heard Mr. Jitender Sethi, learned counsel for the petitioner and Mr. Amit Chadha, learned APP for the State and perused the material on record.

6. The learned counsel for the petitioner contends that the a perusal of the FIR would show that the allegations are primarily against the son of the petitioner. The learned counsel for the petitioner has taken this Court through the statement dated 02.12.2019 given by the deceased to the police wherein she has stated that her husband, Shahrukh, who is always under intoxication, gave beatings to her and that she was saved by her uncle. It was further stated in the said statement that action be taken against Shahrukh. The learned counsel for the petitioner contend that the said statement was recorded in the Police Station Seelampur vide DD No.4A and the husband of the deceased was arrested. The learned counsel for the petitioner therefore contends that the grievance of the deceased was primarily against her husband and the allegation of dowry etc. have been levelled against the in-laws of the deceased after the death of the deceased only to implicate them.

7. *Per contra*, Mr. Amit Chadha, learned APP contends that the deceased was harassed and tortured by her in-laws and because of the torture and harassment she took the extreme step and committed suicide leaving behind two minor children aged four and two years respectively. He states that the husband of the petitioner has passed away and one more accused is absconding. He states that the petitioner is not cooperating in the investigation. He further states that the Post-Mortem report of the deceased reveals that there are injuries on the hands, lips and fingers of the deceased which shows that the deceased was subjected to torture and harassment because of which she committed suicide and therefore the petitioner ought

not to be granted bail.

8. A perusal of the complaint given by the deceased on 02.12.2019, which is registered *vide* DD No.4A at Police Station Seelampur, reveals that the deceased was being beaten up by her husband. There is nothing on record, at this juncture, to substantiate the allegations against the petitioner herein. A perusal of the statement given under Section 161 Cr.P.C of one Anis, who is the nephew of the petitioner herein, shows that the deceased went back to her matrimonial home on the promise that her husband will not beat her again. The said settlement is in the custody of a family friend of the petitioner and in any event just for the recovery of the settlement deed the custody of the petitioner is not required. There are enough provisions in the Cr.P.C for the search of the house of the petitioner for obtaining the said settlement.

9. The petitioner is an aged lady of about 55 years. This Court is of the opinion that no useful purpose would be served in taking the petitioner in custody and the fact the one co-accused is absconding is no ground to arrest the petitioner. Keeping in mind the fact that more than eight months have passed after interim protection was granted to the petitioner and the fact that there is no necessity of custodial interrogation of the petitioner, this Court is inclined to confirm the order dated 09.11.2020 on the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of ₹50,000/- with two sureties of the like amount, one of them being a relative of the petitioner, to the satisfaction of the Trial Court/Duty Magistrate.
- b) The petitioner shall not leave NCT of Delhi without prior permission of this Court.

- c) The petitioner is directed to give all her mobile numbers to the Investigating Officer and keep them operational at all times.
- d) In the Memo of Parties it is stated that the petitioner is a resident of B-1, B Block, Near Jama Masjid, New Seelampur, North East Delhi. The petitioner is directed to continue to reside at the same address. In case there is any change in the address, the petitioner is directed to intimate the same to the IO.
- e) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.
- f) Violation of any of these conditions will result in the cancellation of the bail given to the petitioner.

10. It is made clear that the observations made in this order are only for the purpose of grant of anticipatory bail to the petitioner and cannot be taken into consideration in the trial.

11. Accordingly, the bail application is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J.

AUGUST 09, 2021

Rahul