

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

Date of decision: 13th DECEMBER, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2754/2021**

OMENDER

..... Petitioner

Through Mr. Abhijat, Mr. Nikhil Mehta, Mr.
Arpit Kumar Singh and Mr. Varun
Sharma, Advocates.

versus

STATE

..... Respondent

Through Mr. Amit Chadha, APP for the State
with Insp. Manish Kumar, PS Pandav
Nagar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner seeks regular bail in FIR No.443/2020 registered at Police Station Pandav Nagar for offences under Sections 341/302/323/304B/306/498A/34 IPC.

2. Facts, in brief, leading to the instant petition are as under:

- a) A PCR Call was received at Police Station Pandav Nagar on 17.08.2020 which was recorded *vide* DD No. 81A regarding a quarrel and administration of poison. The Police reached the spot, but the victim had already been moved to LBS Hospital. The Police reached LBS Hospital where Smt. Santosh, wife of the petitioner herein was admitted with history of ingestion of unknown substance. It is stated that Police tried to record the statement of the victim, but she was not in a condition to give

the statement. It is stated that the IO informed local SDM that the incident had occurred within seven years of marriage. It is stated that the victim was continuously unfit for statement and she passed away on 26.08.2020.

- b) Inquest proceedings were carried out by the Special Executive Magistrate. The father of the deceased gave a statement to the Special Executive Magistrate where he stated that the marriage of his daughter (deceased/Santosh) was performed four years back. He stated that everything was fine for the first two years, but after two years of marriage, the petitioner herein, his mother and younger brothers started beating, taunting and torturing his daughter for dowry. It is stated that the complainant gave Rs.2 Lakhs as dowry to the father of the petitioner, but the demands for dowry continued. He stated that on not being satisfied with dowry, the petitioner and his family members used to torture and beat the deceased and threatened to kill her. It is stated that the complainant went to the house of the deceased twice, but her in-laws did not send her with him. It is stated that they used to threaten the deceased that they would kill her. It is stated that the deceased requested the complainant to take her back from the house of her in-laws. It is stated that on 17.08.2020, the complainant along with one Maikulal, who was known to both the sides, went to the house of the deceased. It is stated that they were accompanied by the wife of Maikulal and the complainant's grand-daughter - Mansi (daughter of his son/niece of the deceased). It is stated that the complainant was not

permitted to meet his daughter. It is stated that the complainant, Maikulal and Maikulal's wife went to a relative's house while complainant's grand-daughter stayed back with her aunt i.e. the deceased. It is stated that the deceased consumed poison and the petitioner herein was trying to throttle her. It is stated that when the complainant tried to rescue his daughter, the family members of the petitioner started beating him. It is stated that the petitioner and his family members did not take the deceased to the hospital and told the complainant that they would treat her at home. It is stated that some local medicine was administered on the deceased. It is stated that when the complainant's son came there and wanted to take the deceased to the hospital, he was also beaten and it is only when the Police was informed, the deceased was taken to hospital. On this statement, FIR No.443/2020 was registered at Police Station Pandav Nagar for offences under Sections 341/302/323/304B/306/498A/34 IPC.

- c) Material on record discloses that on 18.01.2021, the complainant gave statement under Section 164 Cr.P.C to the Police. Material on record further discloses that on 13.01.2021, the complainant gave a second statement wherein he stated that his grand-daughter, Mansi (daughter of his son/niece of the deceased) told him that on 17.08.2020 when the complainant went with Maikulal to his relative's house, the petitioner herein, his mother, his father and his brothers had a fight with the

deceased, and they beat her and forcefully made her drink insecticide.

- d) On 02.02.2021, statement of the grand-daughter of the complainant was recorded wherein she stated that on 17.08.2020, she along with her grandfather (the complainant herein) went to her aunt's (deceased) house. She stated that when the father-in-law of her aunt refused to send her aunt with her grand-father, her grand-father along with Maikulal and his wife went to another Jhuggi. She stated that she stayed back with her aunt and while they were sitting, the petitioner herein came and started abusing her grand-father. It is stated that when the deceased objected to it, the petitioner started beating her and tried to throttle her, grabbed her neck and forcefully made her drink insecticide.
- e) Charge-sheet has been filed.
- f) The petitioner approached the Court of learned Additional Session Judge, Karkardooma Courts for grant of bail. The learned Additional Session Judge *vide* order dated 22.07.2021 dismissed the bail application of the petitioner.
- g) The petitioner has thereafter filed the instant petition.

3. Mr. Abhijat, learned counsel appearing for the petitioner, states that there is constant improvement in the version of the complainant. He states that in the first version given to the Special Executive Magistrate and in his first statement given under 161 Cr.P.C., the complainant has not made any statement as to whether it is the petitioner herein who administered poison to the deceased. He states that only when the complainant was called by the

Police, the complainant improved his version by stating that he was told by his grand-daughter that she saw the deceased being forcefully administered something by the petitioner and his family members. He states that it is not possible that a person who has seen the entire incident, would not come forward to give a statement. He, therefore, contends that the whole story of the complainant is a concocted one. He further relies on the viscera report which does not show any kind of poison.

4. *Per contra*, Mr. Amit Chadha, learned APP for the State, opposes the bail by stating that the petitioner is accused of an offence under Section 302/304B. He states that the deceased had been constantly tortured for dowry and when the demand was not satisfied, they did away with her by administering poison to her. He contends that even charges have been framed and, therefore, at this juncture, the petitioner ought not to be granted bail.

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

6. The petitioner is accused of a very serious offence.

7. The factors which have to be kept in mind while considering an application for bail are:

- a. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- b. nature and gravity of the accusation;
- c. severity of the punishment in the event of conviction;
- d. danger of the accused absconding or fleeing, if released on bail;

- e. character, behaviour, means, position and standing of the accused;
- f. likelihood of the offence being repeated;
- g. reasonable apprehension of the witnesses being influenced; and
- h. danger, of course, of justice being thwarted by grant of bail.

8. The complainant was not inside the *jhuggi* where the incident occurred. He was outside. Therefore, the fact that he did not reveal that his daughter (the deceased) was administered with some poison on the very first instance cannot enure to the advantage of the accused. In fact, this shows that the complainant did not want to falsely implicate the petitioner for an offence of murder because had that been the case, the complainant would have, at the very first instance, stated that the poison was administered by the petitioner herein only. It is only when the petitioner's grand-daughter/niece of the deceased informed him that the poison was administered to the deceased by the petitioner herein that he gave a second statement. The statement of the complainant has been corroborated by the child witness who was present at the spot at the time of the incident. The reason as to why the child did not speak out immediately cannot be analysed at this stage. The grand-daughter of the complainant is only 12 years of age. Further, witnessing such kind of incident would have inevitably traumatised and horrified the child. This Court cannot find fault in her silence at this juncture.

9. Material on record shows that after the FSL report was obtained, the police had obtained a second report from Dr. S. Lal, MD, Forensic Medicine, LBS Hospital who has opined as under:

"After going through the PM report finding, FSL report and opinion from medicine Deptt, the cause of death was due to ingestion of Organophosphate poisoning cannot be ruled out."

10. The statement of the child witness, even though made after some time, does make out a *prima facie* case of Section 302 IPC. The constant say of the complainant that dowry was being demanded constantly from the deceased, *prima facie*, makes out a case of Section 304B IPC. Considering the fact that the petitioner is accused of a serious offence punishable under Section 302 IPC for which minimum imprisonment is life sentence, the consistent stand of the complainant that his daughter was constantly being pressurized and tortured for money, and also considering the fact that a small child has witnessed the incident, the evidence is yet to be recorded and the chances of the petitioner tampering with evidence and influencing the witnesses cannot be ruled out at this juncture, this Court is not inclined to grant bail to the petitioner.

11. Keeping in mind the fact that the incident happened in August 2020, the Trial Court is requested to expedite the proceedings.

12. With these observations, the petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 13, 2021

Rahul