

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Sugato Majumdar

CRM 7164 of 2021

Kushal Agarwal
versus
State of West Bengal

<i>For the Petitioner</i>	:	<i>Mr. Siddhartha Luthra, Sr. Adv., Mr. Milan Bhattacharya, Sr. Adv., Mr. Sandipan Ganguly, Sr. Adv., Mr. Debasish Roy, Mr. Nilay Sengupta, Mr. Sabyasachi Banerjee, Mr. Ayan Bhattacharya, Mr. Ankit Agarwala, Mr. Rudradipta Nandy, Mr. Mithun Singh, Mr. Sujit Banerjee.</i>
<i>For the State</i>	:	<i>Mr. Saswata Gopal Mukherjee, Ld. P.P., Mr. Sudip Ghosh, Ms. Sonali Das.</i>
<i>For the De Facto Complainant</i>	:	<i>Mr. Kalyan Bandopadhyay, Sr. Adv., Mr. Ajay Agarwal, Mr. Somopriyo Chowdhury, Mr. Sanket Sarangi, Mr. Arka Banerjee.</i>
<i>Hearing is concluded on</i>	:	<i>15.02.2022.</i>
Judgment On	:	23rd February, 2022.

Tapabrata Chakraborty, J.

1. Apprehending arrest in connection with Alipore Police Station Case No.15 of 2021 dated 17th February, of 2021 under Sections 498A/306/34 and later added Sections 406/304B of the Indian Penal Code (in short, IPC), the present application has been preferred.

2. Shorn of unnecessary details, the facts are that upon negotiation between two families, the petitioner's marriage with the victim was held on 9th February, 2020 at Umaid Bhawan Palace, Jodhpur. After marriage the couple immediately left for honeymoon to Dubai and Oman for about six days. Upon returning to India, the petitioner's family arranged a post marriage celebration on 23rd February, 2020 in their ancestral house at Purulia. Thereafter the couple attended various parties and ceremonies together. From November, 2020 till 11th February, 2021, the couple visited different places. But unfortunately thereafter on 16th February, 2021 the victim fell down from the 3rd floor of her matrimonial house and succumbed to her injuries. On 17th February, 2021 the victim's father lodged a complaint and the present case was registered under Sections 498A/306/34 of IPC. In continuation with the said complaint, the victim's father submitted a further representation dated 25th February, 2021. In course of investigation, Sections 406/304B of IPC were added at the behest of the investigating agency. Alleging *inter alia* that the victim's family members were publishing disturbing and defamatory statements, the petitioner's

father preferred a Title Suit No.208 of 2021 and in an application under Order 39 Rules 1 and 2 read with Section 151 of the Civil Procedure Code filed in connection with the said suit an order was passed on 25th June, 2021 restraining the defendant nos.2 to 4 therein from publishing any defamatory and derogatory statements or news, posts, videos. Alleging *inter alia* that the victim's father had operated a bank locker, jointly held by him and the victim, suppressing the fact that the victim had already expired, petitioner's cousin, namely, Rahul Agarwal lodged a complaint on 22nd July, 2021 and the same was registered as Kalighat Police Station Case No.78 of 2021 dated 22nd July, 2021 under Sections 404, 406, 409, 388, 506 and 120B of IPC. In the same a progress report was submitted by the Sub-Inspector of Kalighat Police Station on 8th September, 2021. In the midst thereof, on 17th April, 2021 a non-bailable warrant of arrest was issued against the petitioner and an anticipatory bail application was initially preferred before the learned Court below on 24th May, 2021 when the case diary was called for. On 29th May, 2021 though the case diary was produced the petitioner's advocate prayed for repeated adjournments on 2nd June, 2021 and on 9th June, 2021. Surprisingly on 15th June, 2021 the petitioner withdrew the said application with liberty to file afresh. Thereafter the present application was filed before this Court in the month of October, 2021. The application was heard on 8th November, 2021 and a coordinate Bench of this Court observed that '*since we are in the process of hearing this application for anticipatory bail, we trust and hope that no adverse action shall be taken against the petitioner till the disposal of the application*'.

3. Mr. Luthra, learned senior advocate appearing for the petitioner submits that the relationship between the victim and her in-laws was cordial throughout. There was no demand for dowry and the victim was never treated cruelly. Even in the first complaint lodged by the victim's father on 17th February, 2021, there is no allegation to the effect that there was any demand for dowry. About a week thereafter on 25th February, 2021, a further representation was submitted by him alleging that there had been incessant demand of various articles from the victim and her family. There is no proximate nexus between the death of the victim and cruelty based on dowry and the ingredients of Section 304B of IPC are not attracted. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Satbir Singh versus State of Haryana*, reported in (2021) 16 SCC 1 and *Bansi Lal versus State of Punjab*, reported in (2011) 11 SCC 477.

4. He further argues that the petitioner had not in any manner instigated or facilitated to cause the unfortunate death of the victim and as such the ingredients of Section 306 are also not attracted. A composite consideration of the factual sequence would reveal that the victim committed suicide in which the petitioner or his family members had no role to play.

5. Drawing the attention of this Court to various documents annexed to the application, Mr. Luthra submits that in the month of June, 2020 the victim began complaining about issues concerning her vision and accordingly the petitioner immediately consulted an ophthalmologist at Fortis hospital on 9th September,

2020 and it was diagnosed that the victim was suffering from a condition medically termed as CSR (Central Serous Retinopathy). Thereafter the victim herself consulted one Dr. Rajdip Hazra, who in his prescription dated 16th June, 2020 observed that she was suffering from depression and was advised to consult a psychiatrist. In the month of November, 2020 the victim also consulted a gynaecologist, namely, Dr. Pallavi Daga, who advised her to consult a psychiatrist for her stress related depression. The victim also consulted one Piya Banerjee, a counsellor and a psychotherapist. In the said conspectus it cannot be ruled out that the victim was suffering from psychiatric problems and there is a proximate nexus between such problems and her unfortunate death on 16th February, 2021.

6. Drawing the attention of this Court to several seizure lists annexed to the application, Mr. Luthra submits that during the period from 16th February, 2021 till 28th July, 2021 seizure was conducted on several occasions and various articles were seized. Referring to the documents annexed to a supplementary affidavit, he apprises this Court that the petitioner himself wrote to the police authorities on 11th November, 2021 and stated that he would be present for investigation purpose. In reply thereto, the investigating authority called the petitioner on 17th November, 2021, 23rd November, 2021 and 29th December, 2021. He duly appeared and cooperated with the investigation and his statements were recorded.

7. He argues that the victim's family members were publishing disturbing and defamatory statements to tarnish the

reputation of the petitioner and his family by launching a vilification campaign and as such the petitioner's father was constrained to prefer a Title Suit No.208 of 2021 and in an application for interim relief an order was passed on 25th June, 2021 restraining the defendant nos.2 to 4 therein from publishing any defamatory and derogatory statements or news, posts, videos.

8. Referring to a progress report submitted by the Sub-Inspector of Kalighat Police Station in the Kalighat Police Station Case No.78 of 2021 on 8th September, 2021, Mr. Luthra submits that all the jewellery in the victim's locker in Axis Bank had been fraudulently misappropriated by the *de facto* complainant.

9. He contends that the provision towards grant of anticipatory bail is a part of fair procedure and is pro-liberty. As the circumstances of the present case do not indicate any behaviour on the part of the petitioner that he would flee from justice or that he may influence the witnesses, he may be granted anticipatory bail on any stringent condition. In support of such contention reliance has been placed upon the judgment delivered in the case *Sushila Aggarwal versus State (NCT of Delhi)*, reported in (2020) 5 SCC 1.

10. He argues that the victim's advocate cannot make oral arguments upon placing reliance upon documents which are not in the case diary inasmuch as such act goes beyond a mere assistive role and constitutes a parallel prosecution proceeding by itself. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Rekha Murarka*

versus State of West Bengal and another, reported in (2020) 2 SCC 474 and *Rakesh Bairagi versus State of West Bengal*.

11. Mr. Mukherjee learned Public Prosecutor opposes the petitioner's prayer drawing our attention to the statements recorded by the witnesses, including the doctors and submits that the couple was having a strained relationship which affected the victim's state of mind and she could not overcome the consequential depression and trauma in spite of her best endeavour and in view thereof, the link between such matrimonial discord and her sudden death cannot be ruled out.

12. He argues that many witnesses including Bikas Yadav, a driver and Sagar Munda, a cook are the employees of the petitioner and there is every possibility that they would be tactically groomed and pressurised by him and his family members to give statements in their favour.

13. He argues that investigation is still in progress and grant of any protection against custodial interrogation would render questioning the suspect being the petitioner herein, to be a mere ritual. The answers given by the petitioner in course of interrogation on 17th November, 2021, 23rd November, 2021 and 29th December would reveal his non-cooperation with the investigation.

14. Mr. Kalyan Bandyopadhyay, learned advocate appearing for the *de facto* complainant submits that on 16th February, 2021 the *de facto* complainant's daughter expired and he was not in a position to comprehend and narrate all the facts and incidents in a nutshell on 17th February, 2021 and as such a further

representation was submitted on 25th February, 2021 detailing all the facts pertaining to dowry demand and other instances of cruelty and harassment. Non-incorporation of the details in the initial complaint dated 17th February, 2021 cannot be construed to be any flaw more so when, FIR is not meant to be an encyclopaedia nor is expected to contain all the details. In support of such contention reliance has been placed upon a judgment delivered in the case of *V.K. Mishra -vs- State of Uttarakhand*, reported in 2015 (9) SCC 588. According to him, the investigation had been conducted in a perfunctory manner. Immediate steps were not taken by the Investigating Officer (in short, I.O.) to recover all incriminating materials. Placing reliance upon judgments delivered in the cases of *State of Rajasthan versus Jaggu Ram*, reported in (2008) 12 SCC 51, *Dr. Naresh Kumar Mangla versus Anita Agarwal and others*, reported in 2020 SCC Online SC 1031 and some *WhatsApp* messages, he submits that the victim had always been taunted and mentally tortured by her husband and her other in-laws for which she was depressed and was instigated to commit suicide. The petitioner is a drug addict and he always used to communicate with his ex-girlfriends stating that he was forced to marry the victim. The death occurred otherwise than under normal circumstances and as such the ingredients of Section 304-B are clearly attracted. Grant of anticipatory bail in such a serious offence would operate to obstruct the investigation. In support of such contention reliance has been placed upon a judgment delivered in the case of *Dr. Naresh Kumar Mangla versus Anita Agarwal and others*, reported in 2020 SCC Online SC 1031.

15. He submits that though the warrant of arrest was issued on 17th April, 2021, no steps were taken by the I.O. to arrest the petitioner and thereafter on the basis of the observations made by a co-ordinate Bench of this Court on 8th November, 2021, the warrant was recalled on 10th November, 2021. A party cannot be allowed to take advantage on the basis of such act of the Court. In support of such contention, reliance has been placed upon the judgments delivered in the cases of *Cantonment Board v. K.P. Singh* reported in (2010) 2 SCC 518, *Kala Bharati Advertising v. Hemant Vimalnath Narichania*, reported in (2010) 9 SCC 437, *Prasanna Kumar Roy Karmakar v. State of West Bengal & Ors.*, reported in (1996) 3 SCC 403.

16. He submits that the petitioner wields influence upon the witnesses, as would be explicit from the report of the I.O. dated 15th August, 2021 wherein it has *inter alia* been stated that the witnesses, who were employees of the petitioner, were being tactically groomed and pressurised by the accused family to give statements in their favour.

17. He argues that there can be no manner of doubt that right from the occurrence of the incident till the decision of the trial, the victim's family is as much interested in the decision as is the accused or the State. At the time of hearing of an application for anticipatory bail, the complainant's advocate cannot be debarred from pointing out the factual details. In support of such contention, reliance has been placed upon the judgments delivered in the cases of *Kanaka Rekha Naik v. Manoj Kumar Pradhan*, reported in (2011) 4 SCC 596, *Debasish Bose v.*

State of West Bengal, reported in 2015 SCC OnLine Cal 163 and *Vinay Poddar v. State of Maharashtra*, reported in 2008 SCC OnLine Bom 1389.

18. In reply, Mr. Luthra submits that the mobile phones of the victim and other mobile phone pertaining to the *de facto* complainant were seized in the month of March, 2021. At the time of such seizure the passwords were not disclosed, as would be explicit from the seizure list itself and as such, a Section 91 notice was issued to provide the passwords and other particulars. Placing reliance upon a progress report dated 6th February, 2022 filed by the I.O. in the Kalighat P.S. Case No.78 dated 22nd July 2021, he submits that the allegation that the petitioner may influence the witnesses, namely, Bikash Yadav and Sagar Munda is absolutely unfounded. Let the certified copy of the said report, as produced, be kept on record.

19. In the case of *Rekha Murarka (Supra)* it has *inter alia* been observed that the extent of assistance by the victim's counsel would depend on the facts and circumstances of each case. There is no absolute bar that the victim's counsel cannot be heard in an application for anticipatory bail. However, we have not considered the *WhatsApp* messages, upon which reliance was placed by Mr. Bandyopadhyay, since the said documents are not there in the case diary.

20. We do not find any application of the maxim *actus curiae neminem gravabit* in the facts of the present case and the judgments delivered in writ appeals in the cases of *Cantonment Board (Supra)*, *Kala Bharati Advertising (Supra)* and *Prasanna*

Kumar Roy Karmakar (Supra), upon which reliance has been placed by Mr. Bandyopadhyay, are not applicable. There is no dispute as regards the proposition of law as laid down in the other judgments upon which reliance has been placed by the respective parties. However, a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight difference in fact or an additional fact may make a lot of differences in the decision making process. The grant or rejection of anticipatory bail will almost always be based upon the given sets of facts and situations.

21. In the decision of the Hon'ble Constitution Bench in *Sushila Aggarwal v. State (NCT of Delhi)* [(2020) 5 SCC 1], upon which reliance has been placed on behalf of the petitioner, the considerations which ought to weigh with the Court in deciding an application for the grant of anticipatory bail have been reiterated. The final conclusions of the Court indicate that:

"....92.3...While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind

of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

22. The death of the victim occurred otherwise than under normal circumstances within a year and a week after her marriage. The offence is of serious nature. In the case diary there is a *Whatsapp* message sent by the victim just before her death to her father on 16th February, 2021 at 2.03 pm which appears to be incriminatory in nature. A composite reading of the statements of Dr. Rajdip Hazra, Dr. Pallavi Daga and Piya Banerjee *prima facie* reflect that there was a matrimonial discord and such strain relationship was contributory towards the victim's low mood depression. In the complaint and the statements of the complainant and his other family members, as recorded under Sections 161 and 164 of the Code, specific allegations have been levelled against the petitioner. Facts and figures of the incessant demands have been detailed involving crores. The mobile phones, one iPad and two laptops, as seized by the I.O. have been sent for forensic examination with a prayer to provide the details of storage items like the contacts, photos, SMS, *Whatsapp* chat and other details. The final report is still awaited.

23. In their statements as recorded on 5th August, 2021 under Section 161 of the Code, one Bikas Yadav, who is the driver and one Sagar Munda, who is the cook, employed by the petitioner's family, had stated *inter alia* that they are under pressure of losing their jobs. Thereafter they were served notices

for recording their statements under Section 164 of the Code but they refused to record their statements. However, from the progress report in the Kalighat P.S. Case No.78 dated 22nd July 2021 preferred against the *de facto* complainant and others it appears that Bikash Yadav and Sagar Munda volunteered to give their statements under Section 164 of the Code and such statements were also recorded. Contrary stand has been taken by Bikas Yadav and Sagar Munda in the present case and in the Kalighat P.S. Case No.78 dated 22nd July 2021 preferred against the *de facto* complainant and others. In view thereof, *prima facie*, it cannot be ruled out that the petitioner wields influence upon the said witnesses.

24. The records further reveal that on the basis of the materials collected, the I.O. submitted a prayer for inclusion of Section 304-B and 306 of IPC. Such prayer was considered and allowed by the learned Court below. Even after search was conducted at different places, the petitioner could not be arrested and as such the warrant of arrest was issued against the petitioner on 17th April, 2021. Raid was also conducted on 21st April, 2021 by the I.O. in the native place of the petitioner at Purulia but the petitioner could not be arrested. The anticipatory bail application was initially preferred before the learned Court below on 24th May, 2021 when the case diary was called for. On 29th May, 2021 though the case diary was produced, the petitioner's advocate prayed for repeated adjournments on 2nd June, 2021 and on 9th June, 2021. Surprisingly on 15th June, 2021 the petitioner withdrew the anticipatory bail application with liberty to file afresh. Pursuant to such liberty, the petitioner

did not approach the learned Court below but simply waited and filed the present application before this Court in the month of October, 2021. Thereafter on the basis of the observations made by co-ordinate Bench of this Court on 8th November, 2021, the warrant was recalled on 10th November, 2021. It is only thereafter that the petitioner met with the I.O. and recorded his statements under Section 161. Such statements have been brought on record by way of a supplementary affidavit. From such sequence of facts it appears that the petitioner was not available for interrogation and investigation for about nine months from the date of the alleged incident till the month of November, 2021.

25. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring useful information. Success in such interrogation would elude if the suspected person know that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would be a mere ritual.

26. Applying the parameters for grant of anticipatory bail, as discussed in the Constitution Bench judgment in *Sushila Aggarwal v. State (NCT of Delhi)* [(2020) 5 SCC 1, to the facts of the case, we are not inclined to exercise our discretion in favour of the petitioner and his prayer for anticipatory bail is refused.

27. The application being, CRM No.7164 of 2021, is dismissed.

28. The case diary be returned to Mr. Mukherjee, the learned Public Prosecutor appearing for the State.

29. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

30. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Sugato Majumdar, J.)

(Tapabrata Chakraborty, J.)