

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

Reserved on: 28th February, 2023

Pronounced on: 14th March, 2023

+ BAIL APPLN. 968/2022

PAWAN TIWARI THROUGH HIS PAIROKAR Petitioner

Through: Ms. Priya Kumar, Ms. Mrinalini Sen,
Mr. Tanmay Yadav and Mr. Tejas,
Advocates.

versus

**THE STATE OF NCT OF DELHI THROUGH STANDING
COUNSEL CRIMINAL Respondent**

Through: Mr. Ritesh Kumar Bahri, APP for the th
Insp. Pawan Kumar, PS: Sonia Vihar.
Mr. Gaurav Sharma, (DHCLSC) for
Victim/Complainant.

**CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL**

J U D G M E N T

1. This bail application has been filed seeking regular bail in FIR No. 32/2021 PS Sonia Vihar under sections 498A/304B/34 IPC. The petitioner has been in judicial custody since 30th January, 2021. The charge-sheet and supplementary charge-sheet were filed in April, 2021 and November, 2021 respectively. The petitioner is 27 years of age and prior to his arrest was employed with an international food delivery company.

2. As per the case of the prosecution, on 29th January, 2021, pursuant to a

PCR call regarding reporting murder of a girl at House No.D-2/607, Gali No.6, III Pusta, Sonia Vihar, Delhi, the police team went to the place of occurrence where in the room on the first floor, they found body of the victim Kanchan Pandey, wife of the petitioner, lying on the bed. Investigation revealed that on 22nd November 2019 the deceased had married the petitioner. The crime team was called who prepared their own report and took photographs. The IO seized two portions of *chunni* through a seizure memo as the same was apparently used for hanging by the deceased. The MLC was collected from GTB Hospital and the body was preserved in the mortuary. Thereafter in the inquest proceedings before the Executive Magistrate, the mother of deceased Ms. Subhashini Pandey alleged that her daughter was being harassed and tortured by her in-laws and her husband on the pretext of dowry and held them responsible for the death of her daughter. The *post mortem* was conducted in which the doctors opined the time since death was about 6 hours and the cause of death was asphyxia as a result of *ante mortem* hanging. Thereafter the case was registered as per the instant FIR. The statements of witnesses were recorded under section 161 Cr.P.C. and the mobile phones of the deceased and that of the petitioner were seized. The petitioner was then arrested on 30th January, 2021. The mother-in-law Smt. Vidya Devi was also arrested on 7th April 2021. The two mobile phones were later sent to FSL and the *chunni* as well for the opinion of the ligature mark on the neck.

3. The opinion received from GTB Hospital was that the ligature marks mentioned in the *post mortem* report can be produced by hanging *via* the *chunni* exhibited. Subsequently the charge-sheet was filed against the petitioner and the mother-in-law and the supplementary charge-sheet was filed

against the sister-in-law and the brother-in-law as well. Even though the FSL result was received, the data could not be extracted because it was password protected. Subsequently on 3rd August, 2022 the petitioner provided his password pattern for unlocking the phone. On unlocking the phone, it was sent again to the FSL. On 19th September, 2022 charges under section 498A/304B/34 IPC were framed and prosecution evidence is currently underway.

4. The learned counsel for the petitioner contended in support of the bail application that since the investigation was complete, the petitioner was not required for any further investigation, the trial would take a long time and he was still not proven guilty and therefore, should be released from custody. He also submitted that he is only 27 years of age, his parents are dependent on his income and he was gainfully employed and any continued incarceration would affect his livelihood.

5. The learned counsel for the petitioner submitted that the case of the prosecution is basically dependent on statements made by the family members of the deceased which will ultimately have to be proved during trial. There is nothing in the statements, in any event, that demands of dowry were made soon before the death of the deceased, there is no document to support the same. The brother and sister of the petitioner have both been granted on bail on 14th September, 2021. The mother of the petitioner has been released on 4th February, 2022 pursuant to an order of this Court. Further, the information of death of the deceased was given by the petitioner himself and he immediately surrendered his phone to the police and as per the nominal roll, he exhibited good behaviour in custody. Moreover, he has no previous involvement of any sort whatsoever. The trial has only effectively commenced on 15th April, 2023

and the Trial Court has not been able to give dates. In the meantime, the petitioner also lost his father on 2nd February, 2023 for which this Court was pleased to grant him interim bail for a period of 15 days *vide* order dated 3rd February, 2023, which liberty he did not misuse and surrendered in time. Further, he has also got a job offer from an agency for being a store manager and a copy of the appointment letter dated 23rd February 2023 has been shown to the Court.

6. Learned counsel for the petitioner additionally contended that a perusal of the statements recorded under section 161 Cr.P.C. would show that there are no serious or specific allegations relating to demand of dowry, as alleged. The brother of the deceased Vinay Pandey stated that when he himself had bought a bullet motorcycle on 2nd August, 2020, the petitioner had harassed his sister to say that he also needed a bullet motorcycle and a mobile phone. Besides the allegation was that the petitioner demanded shoes worth Rs.3,500/- and a music system. Aside from that there were other demands made by the petitioner, as per the brother of the deceased. The statement of the mother of the deceased also effectively stated what the brother had stated, aside from the fact that a Santro car had been given to the family of the petitioner as well. The learned counsel however stated that aside from these allegations, which are parroted in the statements, there is no evidence of any calls which were made to the parents of the deceased or any suicide note.

7. Reliance has been placed on the decision of this Court in ***Amarkant Mahto v. State***, 2020 SCC OnLine Del 726 where while adjudicating the bail application of the accused charged with similar offences and in similar circumstances, this Court had held that since the deceased had passed away just after one year of marriage, the presumption would be that there was either

cruelty or harassment coupled with the demand of dowry soon before the death of the deceased. However the Court noted it was not required to go into the merits and demerits of the contentions advanced as also the statements relied upon since that would be proved in the trial. The Court had placed reliance on the decision of the Hon'ble Supreme Court in *Savita v. State of Delhi*, (2019) 10 SCC 29 where the Apex Court granted bail to the accused having been in custody for 27 months.

8. Further reliance was also placed on the decision of this Court in *Promila Sharma v. State (NCT of Delhi)*, 2022 SCC OnLine Del 1606. This Court while considering the bail application of the accused in a similar situation of alleged suicide of the wife noted that there was no previous complaint lodged at any point by the deceased or the family members regarding harassment for dowry and there was no specific allegation as to when the demand for dowry was made. Since the charge sheet had been filed, the Court was pleased to grant bail to the accused. Further reliance was also placed on the decision of the Hon'ble Supreme Court in *K.V. Prakash Babu v. State of Karnataka*, (2017) 11 SCC 176 where the Apex Court has noted that while being conscious of the presumption under Section 113-A of the Evidence Act, establishing allegations of mental cruelty will depend on the facts of the case and emphasised that it depends upon an individualistic perception regarding once endurance and sensitivity. The nature of cruelty has to be to such it is likely to drive the spouse to commit suicide and will depend upon its intensity and degree. Learned counsel therefore stated that all these allegations even by the brother will at best relate to demand made in 2020 while the marriage itself was of one year prior in November, 2019.

9. These contentions were refuted by the learned APP for the State stating

that the filing of the charge-sheet itself confirmed the allegations and the parents of the victim who stayed nearby in Gali No. 6 are to be examined. The delay in the trial was also attributed to the petitioner and it was stressed that there were specific allegations of demand, the death had happened within one year of marriage and there was a presumption under Section 113-A of the Indian Evidence Act and that all witnesses had effectively corroborated the case of the prosecution.

10. These contentions were further endorsed by the learned counsel for the complainant who contended that the allegations were specific and that the delay in filing the supplementary charge-sheet was because the petitioner had not given the password for the mobile phone. Reference was also made to certain screenshots filed by the petitioner himself purportedly showing that he had given certain amounts on various dates to the brother of the deceased in September, 2020 and it was submitted that this evidence had been created subsequently.

11. The learned counsel for the petitioner stated in rebuttal that the screenshots of payments would show that the petitioner had sent Rs.27,000/- to the brother of the deceased in September, 2020 and additional monies were sent subsequently on various dates as well of which screenshots had been filed. This would show that the amount of Rs.20,000/-, which is alleged by the family of the deceased to have been taken by the petitioner, was in fact returned since it had been taken as an emergency loan. As regards demand of the music system, it was given to the petitioner and the deceased on the occasion of their first marriage anniversary on 22nd November, 2020. It was clarified that the petitioner had never made a demand for a motorcycle and there is no evidence to prove that such a demand was made. As regards the

demand of shoes, the petitioner had paid a sum of Rs.3,000/- to the brother of the deceased on 7th September, 2020 for this purpose and screenshot of the same had been appended with the petition. As regards giving the password of the mobile, it was asked for in July 2022 and was immediately given in August, 2022.

12. Having assessed the facts and circumstances and appreciating the contentions of the parties, this Court is of the considered opinion that there would be no purpose in continuing the custody of the petitioner since his family members have already been released on bail and as regards the investigation, it has already been completed, charge sheet has been filed, the mobile phones which were already seized have also now been examined by the FSL as regards their data and there is nothing further which is required from the petitioner. Besides, he has also lost his father recently in February, 2023 and the evidence which is being placed by the prosecution against him, is only based upon statements of the family members of the deceased and there is no documentary evidence supporting it and all this would have to be proved in trial. The trial has only commenced now after about 2 years of the charge-sheet having been filed and is expected to take a long time. As regards the petitioner, the nominal roll would show that there is no previous involvement of the petitioner as also that his conduct in jail had been satisfactory. Also, except for the release on interim bail for 15 days to perform the last rites of his father in February, 2023, the petitioner has not sought any interim bail till date.

13. As regards the concern relating to influencing the witnesses, who are stated to be living close by, the petitioner can be put to terms to not to interfere with the witnesses or influence them directly or indirectly in any

manner, violation of which would result in cancellation of bail. Also it may be noted that the family of the petitioner/co-accused are already out on bail for some time now, and his release in itself cannot now be a trigger for any tampering, if at all.

14. The Hon'ble Supreme Court in **Satender Kumar Antil v. CBI**, (2022) 10 SCC 51 observed as follows:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”

(emphasis added)

The Hon'ble Supreme Court also noted the observations made by Krishna Iyer, J., in **Gudikanti Narasimhulu v. Public Prosecutor**, (1978) 1 SCC 240 as under:

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law. The last four words of Article 21 are the life of that human right.””

(emphasis added)

The Hon'ble Supreme Court further made note of their observations in **Sanjay Chandra v. CBI**, (2012) 1 SCC 40 as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused

person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances."

(emphasis added)

15. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 1,00,000/- with one surety of the like amount subject to the satisfaction of the Ld. Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide a permanent address to the Ld. Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.

- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.
- vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family, directly or indirectly, or tamper with the evidence of the case.

16. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

18. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

19. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 14, 2023/sm