



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

% Judgment reserved on : 02.08.2023
Judgment pronounced on: 08.08.2023

+ BAIL APPLN. 1582/2023

PRADEEP Petitioner
versus

STATE Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Mohit Mathur, Senior Advocate with Mr. D.S. Kohli, Mr. Harvinder Singh, Mr. Aakash Choudhary, Mr. Amit Tanwar, Mr. Sahaj Garg and Mr. Yash Kadyan, Advocates.

For the Respondents : Ms. Priyanka Dalal, APP for State with SI Mandeep, PS-Karawal Nagar.
Mr. Hans Raj Singh and Mr. Aashish Sharma, Advocates for Complainant.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is a regular bail application filed under section 439 read with section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") seeking release of the applicant on bail, in



relation to the First Information Report (hereinafter referred to as “FIR”) No.303/2022 dated 26.06.2022 registered with Police Station Karawal Nagar, Delhi under Sections 498A/304B/34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”).

2. The Notice was issued in the case on 12.05.2023. The Status Report was filed on 10.07.2023. As per the nominal roll dated 07.07.2023, the applicant has admittedly been in custody since 08.07.2022. The investigation in this case is complete. The chargesheet in the present case was filed on 12.09.2022. The charges are yet to be framed in this case. The learned Trial Court rejected an application for grant of bail of the applicant *vide* order dated 10.04.2023.

3. As per the case of the prosecution, on 24.06.2022 a PCR call vide DD No. 74 was received at Police Station Karawal Nagar, Delhi regarding suicide and death. The call was made by the father of the applicant. It was stated by the father of the applicant that the deceased victim and applicant got married on 05.02.2022 and deceased victim committed suicide in her bedroom on 24.06.2022.

4. On 25.06.2022, SDM/Karawal Nagar, Delhi recorded the statements of the father and brother of deceased. Both alleged in their statements that deceased victim was continuously subjected to harassment and cruelty by her in-laws for dowry and the applicant



also had an extra marital affair. They have also alleged that the deceased victim was beaten brutally by her in-laws.

5. The Post Mortem examination of the deceased victim was conducted by an autopsy surgeon under videography and photography in the presence of SDM Karawal Nagar, Delhi. The Post Mortem Report (hereinafter referred to as PM Report) revealed that the cause of death is asphyxia as a result of ante-mortem hanging. As per the PM Report, the ante-mortem injuries were as follows:- I) Ligature mark present over the front and right side of the neck. II) Abrasion, reddish in colour, crescentic in shape, measuring 0.3 cm x 0.2 cm was present over the anterior aspect of the left forearm. III) Lacerated wound, measuring 0.5 cm x 0.2 cm, subcutaneous deep, present over the hypothenar eminence of the right hand.

6. The present case was registered on the statement of the father of the deceased victim.

7. Mr. Mohit Mathur, learned Senior Counsel appearing on behalf of the applicant, submits that the date of occurrence of the incident is 24.06.2022 at 01:00 pm as per PM Report. The brother and father of the deceased victim did not make any allegation or even a mere apprehension against the applicant despite being informed of the incident. The next day i.e. on 25.06.2022 for the first time before the SDM, allegations against the applicant were raised by the family members of the deceased victim.



8. The learned Senior Counsel refers to the statement of the father of the deceased victim and submits that the father of the deceased victim has clearly made false allegations of demands for XUV 700 Car and Rs.20 Lakhs in the form of dowry and consequential cruelty thereto, by the applicant's family upon the deceased victim. The father of the deceased also made allegations of an extra-marital affair of the applicant and that the deceased victim had conveyed about the applicant's affair through phone to the brother of the deceased victim.

9. The learned counsel further refers to the statement of the brother of the deceased victim and submits that the brother had made false allegations that the bodily injury suffered by the deceased, was caused by the applicant and his family before the death of the deceased victim, however, the details of external injuries in PM Report have not revealed any bodily injury occurring due to the alleged assault.

10. The learned Senior Counsel submits that from the PM Report it is very clear that the cause of the death is Asphyxia as a result of ante-mortem hanging, however, viscera has been preserved as per the request of the Investigating officer. He further submits that a second opinion of Forensic Science Laboratory (hereinafter referred to as "FSL") states the ligature mark present over the neck of the deceased victim is not formed due to strangulation.



11. The learned Senior Counsel further submits that this is not a case of Section 304B IPC at all. Even offence under Section 306 IPC cannot be made out against the applicant, as the applicant had neither instigated nor abetted the deceased victim to commit suicide. Section 304B IPC & Section 306 IPC are extracted hereunder:-

“[304B. Dowry death. -- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation. For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

12. The learned senior counsel further refers to the statement of the wife of one of the co-accused and submits that in her statement she states that the deceased victim and the applicant never had any marital problem and she was on her family way.



13. The learned Senior Counsel further refers to the statement of the minor granddaughter of the applicant's family, the first person who witnessed the body of the deceased victim and submits that in her statement she stated that she went to hand over the phone call of the father of the deceased victim to the deceased to talk, on the instructions of the father of the applicant, which was falsely denied by the father of the deceased victim in his statement. The falsehood is established from the CDR placed on record by the Investigating agencies.

14. The learned Senior Counsel submits that three grounds were taken by the learned Trial Court for rejecting the bail of the applicant: firstly, the deceased victim was not allowed to talk to her father; secondly, the deceased victim's call with the brother of the deceased victim regarding the applicant having extra-marital affair and thirdly, the phone of the deceased victim was snatched by the applicant while she was on call with her brother.

15. The learned Senior Counsel draws the attention of this Court to the chargesheet and submits that the statement of the brother of the deceased is wrong as he had received a call from the deceased victim on 24.06.2022 at 11:20 AM and had spoken to each other for about 12 minutes. He further submits that the father of the applicant called the father of the deceased victim around 12:43 PM and the call lasted for about 3 minutes. On that he submits that it is not the case where the



father of the deceased victim called up and there was a refusal from the applicant's side and he submits that the story cannot be rebuilt by the prosecution as per their convenience as chargesheet has already been filed. According to learned Senior Counsel all these allegations are falsified by the CDR records.

16. Mr. Mathur, learned Senior Counsel further submits that as per the whatsapp chat between the applicant and the deceased victim (appended at pg: 33) on 23.06.2022 their conversation seems to be a normal one between any married couple.

17. He also submits that on 24.06.2022 at 11:11 AM, the applicant and the brother of the deceased victim had a conversation with each other through WhatsApp regarding the deceased victim's misunderstanding regarding applicant being involved in allegedly an extra-marital affair. At 11:19 AM the applicant had sent a message to the brother of the deceased victim requesting to take care of the whole situation if the deceased calls the brother and as per the chargesheet the deceased victim's call to her brother is at 11:20 AM. On this basis, the learned senior counsel submits that the presumption of applicant snatching the phone from the deceased victim is unacceptable.

18. Mr. Mohit Mathur, learned Senior Counsel appearing for the applicant concludes his arguments by citing the judgement of the Coordinate Bench of this Court in *Nadeem Chaudhary Vs. State of NCT*



of Delhi, reported in **2023 SCC OnLine Del 1295**. The relevant paragraphs as referred to are extracted hereunder:-

“17. It is alleged that on the day of incident, the victim had called and mentioned that the applicant was having extra marital affairs and on being confronted, he had beaten the victim. It is not alleged that the victim had called prior to her death and complained about the cruelty for the reasons of demand of dowry.

18. Whether the victim was subjected to cruelty soon before her death in connection with any demand of dowry so as to attract the presumption as provided in Section 304B IPC, would be a subject matter of trial and cannot be presumed at this stage.”

19. The learned Senior Counsel also refers to the judgement of the Supreme Court in ***K V Prakash Babu Vs. State of Karnataka*** reported in **(2017) 11 SCC 176**. The relevant paragraphs as referred to are extracted hereunder:-

“18. Having said that, we intend to make it clear that if the husband gets involved in an extra-marital affair that may not in all circumstances invite conviction under Section 306 IPC but definitely that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. And we so clarify.

19. Consequently, the appeals are allowed. The conviction under Sections 306 and 498-A IPC is set aside. The appellant be set at liberty unless his detention is required in connection with any other case.”

20. *Per contra*, Ms. Priyanka Dalal learned Additional Public Prosecutor (hereinafter referred to as “APP”) for the state submits that the marriage was solemnized between the applicant and the deceased



victim on 05.02.2022 and the date of incident is 24.06.2022. She submits that within five months of marriage, the deceased victim died who was also in the family way.

21. Ms. Dalal further submits that the statement of the father of the deceased victim, particularly to question no. 5 clearly shows that there is a clear allegation of demand for dowry. On that basis, she submits that the condition, “*soon before her death*” under Section 304B IPC is satisfied as the statements of the father and the brother of the deceased and in the supplementary chargesheet the statement of the uncle of the deceased corroborates the same.

22. The learned APP, further passes over the bench the pictures of the incident occurred in the house of the applicant on the date of the death of the deceased victim. The pictures shows the LCD Screen was broken, there was broken bangles, there’s injury on the hand of the deceased, there was injury on the neck because of the ligature mark and on this basis, she submits that the picture shows the violence before the deceased committed suicide.

23. Ms. Dalal agrees to the fact that there was a conversation between the applicant and the brother of the deceased. She submits that the brother had also not denied the fact that he had a conversation with the applicant and he also states in the SDM report that the deceased was talking about the extra-marital affair of the applicant.



24. Ms Dalal, learned APP further submits that the term “soon before” under Section 304B does not mean the day before the deceased had committed suicide or even in recent past. On that basis, she submits that soon before is irrelevant since marriage itself is of 4 months and she submits that all these are matters of trial. On this, learned APP relies on the judgement of the Supreme Court in ***Devender Singh & Others Vs State of Uttarakhand***, reported in **2022 SCC OnLine SC 489**. The relevant paragraph as referred to are extracted hereunder:-

“12 ... As to the phrase ‘soon before her death’, it is well-settled that the same ought to be interpreted to mean proximate and to be linked with but not to be understood to mean immediately prior to the death”

25. Ms Dalal, refers to the statement of one of the co-accused’s wife and submits that in her statement she alleges that they all rushed inside the room when the minor granddaughter screamed and the deceased was hanging by the handle of the Almirah by a Chunni (dupatta). She further compares the statement of the minor granddaughter with the statement of the wife of the co-accused and submits that in the statement of the minor granddaughter she states that she saw the body of the deceased victim on the floor and screamed. Ms. Dalal further submits that from the PM Report, the height of the deceased is 155 cm and the height of the handle is 140



cm from where she hanged herself and on that she submits all of this is a matter of trial.

26. Ms. Dalal refers to the statements of Chacha & Chachi of the deceased from the Inner Case Diary No. 8787 and submits that in their statement they had stated that the deceased victim had informed about the physical assault by the applicant's family and the extra-marital affair of the applicant.

27. Ms. Priyanka Dalal, learned APP for the State concludes her arguments by stating that the offences committed by the applicant are grave and maximum punishment for which is life imprisonment and thus she submits that the applicant may not be enlarged on bail.

28. *In rebuttal*, Mr. Mohit Mathur, learned Senior Counsel appearing for the applicant submits that charge sheet was filed on 09.09.2022 and the statement of the Chacha and Chachi was recorded on 21.03.2023 and came out in the third supplementary chargesheet regarding demand of dowry. Learned senior counsel submits that there was no explanation on the part of the prosecution for this inordinate delay. As per the statement of Chacha and Chachi, the deceased was in her maiden home in the month of April, 2022 and she died in June 2022.

29. Mr. Mathur, learned Senior Counsel relies on the judgement of the Supreme Court in *Sham Lal Vs. State of Haryana* reported in



(1997) 9 SCC 759. The relevant paragraph as referred to are extracted hereunder:-

“11. It is imperative for invoking the aforesaid legal presumption, to prove that “soon before her death” she was subjected to such cruelty or harassment. Here, what the prosecution achieved in proving at the most was there was persisting dispute between the two sides regarding the dowry paid or to be paid, both in kind and in cash, and on account of the failure to meet the demand for dowry, Neelam Rani was taken by her parents to their house about one and a half years before her death. Further evidence is that an attempt was made to patch up between the two sides for which a panchayat was held in which it was resolved that she would go back to the nuptial home pursuant to which she was taken by the husband to his house. This happened about ten to fifteen days prior to the occurrence in this case. There is nothing on record to show that she was either treated with cruelty or harassed with the demand for dowry during the period between her having been taken to the parental home and her tragic end”.

30. On that basis, learned Senior Counsel requests that considering the nature and facts as presently available, the accused person is entitled for and may be enlarged on regular bail, in the present case.

ANALYSIS OF THE COURT

31. This Court has heard the submissions of Mr. Mohit Mathur, learned Senior Counsel as also Ms. Dalal, learned APP who was also assisted by Mr. Hans Raj Singh counsel for the complainant.

32. This is a case of an unfortunate death of a young woman barely within 5-6 months of her marriage, by suicide on 24.06.2022.



33. The case of the prosecution is that due to the harassment by the applicant and his family members on account of demand of dowry that the deceased committed suicide.

34. According to the prosecution, the Post Mortem of the deceased did not reveal any strangulation mark and the ligature mark common to suicide by hanging was present. The statement of the father and the brother of the deceased were recorded by the SDM, Karawal Nagar, Delhi on 25.06.2022. It is the case of the prosecution that the brother and father stated that the deceased was continuously subjected to harassment and cruelty by her in laws on account of dowry coupled with the allegation that the applicant was involved in extra marital affairs.

35. The Post Mortem of the deceased was conducted by the autopsy surgeon in the presence of SDM, Karawal Nagar, Delhi on 25.06.2022. The PM Report revealed that the cause of death is asphyxia as a result of ante-mortem hanging. As per the PM Report, the ante-mortem injuries were as follows:-

'i) Ligature mark present over the front and right side of the neck.

ii) Abrasion, reddish in colour, crescentic in shape, measuring 0.3 cm X 0.2 cm was present over the anterior aspect of the left forearm.

iii) Lacerated wound, measuring 0.5 cm x 0.2 cm, subcutaneous deep, present over the hypothenar eminence of the right hand.'



36. In view of the aforesaid, the FIR bearing No.303/2022 under Section 498A/304B/34 IPC was registered.

37. It is not disputed by the parties before this Court that all the other co-accused persons other than the present applicant were released on anticipatory bail by the learned Sessions Court vide order 21.09.2022.

38. Mr. Mohit Mathur, learned Senior Counsel painstakingly took this Court through the PM Report, the statement of various witnesses, the FSL report, the chargesheet and the CDR record of the relevant calls which were made on the fateful day. That apart, learned senior counsel also relied upon certain judgments to buttress his arguments.

39. Opposing the submissions of Mr. Mohit Mathur, learned Senior Counsel, Ms. Dalal, learned APP also referred to the documents on record and has relied upon the judgment of Supreme Court in *Devender Singh (supra)*.

40. As of now, it appears that this is not a case of homicidal death. The injuries, as observed in the PM Report on the external examination, are present on the deceased. Prima facie, it appears that the deceased had unfortunately committed suicide, seemingly supported by the opinion rendered by the autopsy surgeon who conducted the Post Mortem. However, it is very difficult to correlate or connect the same to any of the allegations made against the applicant to be considered at this stage.



41. This Court had perused the statements of the brother as also the father of the deceased from which it appears that allegedly the applicant and his family members had made certain demands in respect of the car and some money. However, the same appears to be general in nature and do not appear to be connected with the theory of a demand of dowry soon before the suicide. Though, the unfortunate death of the deceased did occur within the first six months of the marriage, however, the proof or otherwise of such demand having been made by the applicant and his family members would be best left for the trial and no observations regarding the same would be justified at this stage.

42. It has also come on record that even after the PM report was obtained, the IO had sought another opinion in regard to rule out as to whether the ligature mark found on the neck of the deceased, was not due to strangulation. If the answer was in the negative, then the cause of death was also sought. In answer to the said query it was reaffirmed that the ligature mark was not due to the strangulation and the death was caused due to asphyxia as a result of ante-mortem hanging. The result of the aforesaid second opinion leads to a *prima facie* conclusion that the deceased died as a result of hanging.

43. Mr. Mohit Mathur, learned Senior Counsel meticulously referred to the calls made by the deceased to her father and brother and *vice-versa*, as also the calls and WhatsApp messages exchanged



between the applicant and brother of the deceased. According to Mr. Mathur, learned senior counsel, the deceased had spoken not only to her father twice on the fateful day but had also spoken with her brother from 11:20 a.m. to 11:32 a.m. and that is a good 12 minutes. According to Mr. Mathur, learned Senior Counsel in case there was any serious or grave situation existing in the morning of the fateful day, there was no reason why the father or the brother of the deceased did not take any immediate action to reach the matrimonial house of the deceased.

44. This court has considered the aforesaid submission and as of now without commenting on the admissibility or correctness of the aforesaid call records, does lean towards the submissions so made. This is for the reason that from the morning of the fateful day till 12:43 noon, there does not seem to be any alarm bells ringing in the minds of the father or the brother in respect of the allegations made against the applicant subsequently. That apart, the WhatsApp chat emanating from the applicant to the brother and *vice-versa* where the applicant requests the brother to intervene in the disputes between himself and the deceased on account of misunderstanding due to the alleged extra martial affair that the applicant was being accused of by the deceased. A perusal of the WhatsApp chat indicate that the brother had acceded to the request of the applicant and has in fact asked him to come over to his house to have a chat. This *prima facie*, indicates



that there was no urgency or a sense of emergency displayed by the brother of the deceased.

45. Moreover, the deceased had spoken to her brother for almost 12 minutes from 11:20 am to 11:32 am through her own mobile. Despite this, there was no reaction at all by the brother to visit his sister, the deceased. This coupled with the fact that the applicant was in touch with the brother of the deceased through WhatsApp a few moments before the deceased spoke to her brother. The brother and father of the deceased maintained a strict silence in respect of the said phone calls etc.

46. With respect to the submissions of Ms. Dalal, learned APP regarding the statement of Chacha and Chachi of the deceased as recorded in the inner case diary implicating the applicant and his family members regarding demand of dowry soon before the applicant committed suicide is concerned, suffice it to observe that the said statements were recorded after the charge sheet was filed and formed part of the supplementary chargesheet. In fact, as per the statements of Chacha and Chachi, the deceased was in her parental home for the last 40 days before the fateful day, thus, they may be a product of afterthought which requires no reliance at this stage, lest the same prejudice the case of either of the parties.

47. That much has been argued on the demand of dowry and the doctrine of demand of dowry soon before the death of the deceased.



Though the father and brother of the deceased had, in their statements before the SDM Karawal Nagar, on the subsequent day i.e. 25.06.2022 alleged that the applicant as also his family members were harassing the victim for dowry and particularly referred to a demand of a vehicle (XUV 700) and Rs.20 Lacs. Though the allegations were made by both the father and brother of the deceased, the said allegations are not substantiated by any such complaint made against the applicant and his family members any time prior to the fateful day. The aforesaid two said witnesses did not claim that the deceased had, on that fateful day, made any such allegation of demand of dowry against the applicant or his family members. Though it is not to say that the doctrine of “soon before” has to necessarily be very proximate in time to the death of the deceased, however, there has to be some material to be satisfied that there were such demands proximate atleast to the deceased committing suicide.

48. All that has appeared before this Court in respect of what has come on record of the events of the fateful day, point out more towards the alleged grievance of the deceased with the applicant in respect of certain alleged extra marital affair. The judgment of the Supreme Court in the case of *K.V. Prakash Babu (supra)* while examining as to whether extra marital relationship could amount to cruelty under Section 498-A IPC, held that the said allegation may not in all circumstances invite conviction under Section 306 IPC but could



be a ground for divorce or other reliefs in a matrimonial disputes. Though the Supreme Court was considering the issue in respect of the offences under Section 306 IPC, however, applying the said principles to the present case, it cannot be construed that the said allegations could constitute a cause of action for offences under Section 304-B IPC.

49. A Coordinate Bench of this Court in the case of *Nadeem Chaudhary (supra)* in similar circumstances had held that the allegation of the applicant therein having extra marital affair leading to the alleged assault of the victim and the victim not complaining about the demand for dowry would not attract the presumption as provided in Section 304-B IPC at the stage of seeking bail and would be a subject matter of trial.

50. The contrary arguments of Ms. Dalal that the issue of the consideration of the doctrine of “soon before” may not be relevant in the present case since the marriage was only 5-6 months old. So far as the judgment of Supreme Court in *Devender Singh (Supra)* is concerned, there is no quarrel that the phrase “soon before her death” ought to be interpreted to mean proximate and to be linked with but not to be understood to mean immediately prior to the death. This is an issue of fact which would be appropriate to be dealt with by the Trial Court and is not being considered by this Court.



51. Keeping in view the two aforesaid judgments, as of now and at this stage, it is clear that the aforesaid issue is one of fact which has to be proved in evidence by the prosecution and cannot be taken into consideration at this stage, lest it effects the case of either of the parties.

52. In that view of the matter, this Court is of the considered opinion that the applicant can and is released on regular bail on his furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with one surety from the family of the like amount to the satisfaction of the learned Trial Court, subject to the conditions as follows:-

- a) He shall surrender his passport, if any, to the Court concerned and shall under no circumstances leave Delhi without prior permission of the Court concerned;
- b) He shall cooperate in the trial and shall appear before the Court as and when required;
- c) He shall provide his mobile number(s) to the Investigating Officer and keep it on his person and operational at all times;
- d) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the



case or tamper with the evidence of the case, in any manner whatsoever;

e) He shall not indulge himself in criminal activities of any nature whatsoever; and

f) In case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/ Court concerned by way of an affidavit.

53. Any infraction of the above conditions would render the bail granted now liable for revocation.

54. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

55. The application is disposed of in above terms.

56. Copy of the order be communicated to the applicant through the concerned Superintendent Jail.

TUSHAR RAO GEDELA, J

AUGUST 8, 2023

ms/AJ