



2023 : DHC : 8680



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

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Reserved on : 17.11.2023

Pronounced on : 05.12.2023

+ **BAIL APPLN. 2014/2023**

FAIZAN AHMED

..... Petitioner

Through: **Mr. Parveen Dabas, Adv.**

Versus

STATE (NCT OF DELHI)

....Respondent

Through: **Mr. Raghuinder Verma, APP for the State.**

Inspector Deepak Kumar, PS Nangloi.

Ms. Shivani Bhardwaj, Adv. for the complainant.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C read with Section 482 Cr.P.C for grant of regular bail in case FIR No. 372/2018 under Sections 498A/304B/377/34 IPC registered at P.S.Nangloi.

2. I have heard the learned counsel for the petitioner, learned APP for the State assisted by the learned counsel for the complainant, perused the

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status report and also perused the record of this case.

3. It is submitted by the learned counsel for the petitioner that the petitioner is in judicial custody since 02.10.2018, and has been falsely implicated in this case. It is further submitted that the petitioner is a young boy of 30 years of age and is the main bread earner of his family. It is further submitted that none of the prosecution witnesses have alleged anything incriminating against the petitioner and the supplementary statements given by them are nothing but a result of tutoring by their relatives. It is further submitted that the victim (wife of the petitioner) was under depression and frustrated due to many ailments and that is why she had committed suicide. It is further submitted that neither the victim nor her parents have ever made any complaint of dowry demand to the middle man who had facilitated the marriage. It is further submitted that the trial will take considerable time as only 11 witnesses out of 45 have been examined and the co-accused who is the father of the petitioner is on bail. It is further submitted that there are no specific allegations against the petitioner and because he is the husband of the victim, only for that reason he is being penalized. It is further submitted that all the material witnesses have been examined, so, there is now no question of influencing the witnesses or tampering with the evidence.

4. Learned counsel for the petitioner has relied upon ***Babu Singh and Ors. Vs. State of UP AIR 1978 SC 527*** in which the Hon'ble Supreme Court observed as under:

“It makes sense to assume that a man on bail has a better



chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted.”

5. Further learned counsel for the petitioner has relied upon ***Bhagirath Singh Indeja Vs. State of Gujrat, AIR 1984 SC 372***, in which Hon’ble Supreme Court has held as under:

“It is now well settled by catena of decisions of this Court that the punishment before trial is being imposed. The only material consideration in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence.”

6. On the other hand, learned APP for the State, ably assisted by the learned counsel for the complainant, has submitted that the allegations against the petitioner are grave and serious in nature and the victim committed suicide within a span of 1½ months of her marriage with the petitioner due to harassment in connection with demand of dowry by the petitioner and his family members.

7. It is further submitted that the petitioner not only physically abused the victim but she was also subjected to repeated unnatural sexual intercourse during her 19 days stay at her matrimonial home and she was compelled to visit her parental home for treatment of her injuries received during unnatural sexual intercourse which fact is substantiated from the postmortem report of the deceased. It is further submitted that the material prosecution witnesses have deposed about the harassment given to the victim/deceased by the petitioner for bringing insufficient dowry.



8. In the present case, the co-accused who is the father of the petitioner is already on bail. The perusal of the bail order of the co-accused who has been granted bail by the Session Court reveals that the learned APP conceded that there are no specific allegations against him in the charge sheet, however, in the supplementary charge sheet, the complainant had alleged that the petitioner and co-accused used to demand dowry. The co-accused was granted bail as there are no specific allegations against him.

9. As far as the present petitioner is concerned, he is the husband and there are additional allegations of unnatural sex having been committed by him with the victim and these allegations have been categorically denied.

10. During the course of arguments, Ld. APP has submitted that as per the postmortem report the Anal Canal opening is dilated with Haemorrhagic Concusinons in the anal canal but the testimonies of the mother and father of the victim shows that for her medical condition, the victim was taken to Dr. Taushif (PW-6) who has deposed that victim was having gastric problem and pain in her hands and legs. The mother of the victim PW-1 had also talked about the treatment given to the victim by Dr. Taushif as her daughter was suffering from pain in legs and abdomen but when according to the prosecution, the victim was being subjected to anal sex which was to the knowledge of the parents of the deceased, it is not understood that when she was taken to the doctor by her parents for the treatment of her pain in legs and abdomen, why no treatment was provided for her anal suffering and it was not even disclosed or discussed with the doctor.

11. In the instant case, the co-accused is already on bail. The petitioner is



in judicial custody since 02.10.2018 and out of 45 witnesses only 11 witnesses have been examined, the trial will take considerable time and since all the material public witnesses have been examined, there is no question of tampering with the evidence or influencing the witnesses. In these circumstances, the application is allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the trial court concerned.

12. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

DECEMBER 05, 2023

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