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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 2nd August, 2023

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BAIL APPLN. 2345/2022

MUNNA

..... Petitioner

Through: Mr. D.K. Pandey and Mr. Rohit
Kumar, Advocates.

versus

THE STATE

..... Respondent

Through: Mr. Aman Usman, APP for State with
Insp. Sunil Kumar, P.S. Kapashera.
Ms. Seema Misra, Advocate and
Mr. Balram, Advocates for the
complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present application under section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeks grant of regular bail in case FIR No. 470/2021, dated 16.12.2021, under Sections 304B/498A/406/34 of the Indian Penal Code ('IPC'), registered at P.S. Kapashera.

2. The brief facts of the present case, as stated in the status report dated 22.08.2022, authored by SHO, P.S. Kapashera, are as follows:

- i. On 14.12.2021, information was received at P.S. Kapashera regarding suicide of a woman. On reaching the spot, the body of a woman was



found hanging to the ceiling fan. During the course of enquiry, it was revealed that the deceased/Ms. Kanchan was the wife of the present applicant/Mr. Munna and she got married to the latter on 25.04.2021. Accordingly, the Sub-Divisional Magistrate ('SDM') of the area and family members of deceased were informed.

- ii. During inquest proceedings, the Executive Magistrate recorded the statement of Smt. Sunita Devi (mother of the deceased Ms. Kanchan), who stated that her daughter Ms. Kanchan was married to the applicant on 25.04.2021. After marriage, Ms. Kanchan started residing with the applicant at her matrimonial home. In the month of July 2021, both the applicant and Ms. Kanchan shifted to Delhi. Thereafter, the applicant and his mother demanded Rs. 3 Lacs to open a garment shop, however, Smt. Sunita Devi showed her inability to fulfill the demand, due to poor economic condition. It was further alleged that after that, the applicant and his family members mentally & physically harassed & tortured the deceased because her parents could not fulfill their demand for dowry.
- iii. Consequently, FIR No. 470/2021, dated 16.12.2021, under Sections 304B/498A/406/34 of the IPC was registered at P.S. Kapashera and taken up for investigation.
- iv. On 17.12.2021, post mortem of the deceased was conducted and subsequently in the report the cause of death was opined as "*Due to asphyxia caused by ligature hanging. Manner of death appears to be suicide.*"
- v. During the course of investigation, the applicant and Mr. Lakhender Chaudhary (father of the applicant) were arrested and taken into judicial custody on 17.12.2021. Two mobile phones were recovered from



accused's belongings which belonged to the applicant and deceased and were further sent to Forensic Science Laboratory ('FSL') for examination.

- vi. Further, Ms. Khushboo (sister of deceased) provided the screenshots of her chats exchanged with the deceased, with regard to harassment and cruelty faced by the latter. Subsequently, mobile phone of Ms. Khushboo was seized by the police *vide* a seizure memo and was sent to FSL, Rohini, for examination to retrieve data of relevant chats between the deceased and her sister.
- vii. Applicant's father was granted regular bail and mother was granted anticipatory bail *vide* orders dated 19.01.2022 and 01.02.2022, respectively, passed by the learned ASJ, Special Electricity Board, Dwarka.
- viii. On 14.02.2022, chargesheet was filed *qua* the applicant, Ms. Geeta Devi (mother of applicant) and Mr. Lakhender Chaudhary (father of applicant), under Sections 304B/498A/406/34 of the IPC.
- ix. On 11.07.2022, the learned ASJ framed charges in the present case *qua* the accused persons, including the applicant, under Sections 498A/304B/34 of the IPC.

3. Learned counsel appearing on behalf of the applicant submitted that the applicant has been implicated in the present case based on the statement of the mother of the deceased recorded before the learned SDM, wherein she leveled allegations *qua* the applicant (husband of the deceased) and his parents. It was submitted that the applicant's father was granted regular bail and mother was granted anticipatory bail *vide* orders dated 19.01.2022 and 01.02.2022,



respectively, passed by the learned ASJ, Special Electricity Board, Dwarka. It was submitted that the allegations in the FIR are vague and general in nature. It was submitted that the applicant and the deceased got married on 25.04.2021 and in the month of July, the couple went to New Delhi. The allegation in the FIR is that the two days prior to *Raksha Bandhan*, the complainant received a call that the deceased has fainted and has a lockjaw, therefore, all the hospitals have refused to admit her. It has also been alleged that the family of the applicant was allegedly demanding a sum of Rs. 3,00,000/- from the complainant. The complainant allegedly expressed her inability once, but a last demand was made in the month of November. The complainant has also alleged that the victim told one of her sisters that the applicant used to beat the deceased and due to the torment that she faced at the hands of the applicant his family, she took her life.

4. It was further urged that the complainant, in her examination-in-chief- and her cross-examination has stated that she used to call on the applicant's phone to speak with her daughter but she was not aware if her daughter was using a phone. It was further submitted that the complainant volunteered to say that the deceased was, in fact, given a phone which was snatched away by the applicant while they were in Delhi.

5. Learned counsel for the applicant submitted that in her statement recorded before the SDM and the subsequent statement recorded under Section 161 of the CrPC, the complainant, i.e., the mother of the deceased has made no specific allegations in relation to a demand of dowry made by the accused persons 'soon before death' of her daughter. The only allegation is a vague assertion in relation to a demand of Rs. 3 lakhs which has not been



substantiated. It was submitted that the contents of the chats exchanged between the deceased and her sister are also not sufficient to constitute an offence under Section 304B of the IPC.

6. In support of the aforesaid submissions, learned counsel for the applicant placed reliance on the following judgments:

- i. Promila Sharma v. State NCT of Delhi, 2022:DHC:2079.
- ii. Sandeep Kumar and Others v. State of Uttarakhand, Judgment dated 02.12.2020 passed by the Hon'ble Supreme Court in Criminal Appeal Nos. 1512-1513 of 2017.
- iii. Amarkant Mahto v. State, 2020 SCC OnLine Del 726.
- iv. Inderjeet Kaur v. State, 2005 (81) DRJ 735.

7. *Per contra*, learned APP for the State, assisted by learned counsel for the complainant, submitted that the complainant has testified before the learned Trial Court and has supported the case of the prosecution. It was submitted that in her statement given to the *tehsildaar*, on 16.12.2021, the complainant stated that the applicant and his parents had demanded dowry at the time of marriage in the form of Rs. 2 lakhs cash and gold. Even after the marriage, they demanded Rs. 3 lakhs to set up a shop in Delhi. It was submitted that while being at the applicant's native village, the deceased had telephonically informed her parents that the applicant and his parents are harassing her for dowry. After the said incident, the complainant was not allowed to speak with her daughter. Learned APP further submitted that the complainant, who testified as PW-2 before the learned Trial Court, reiterated the same facts in her statement before the Court and despite cross-examination, nothing contradictory to the said facts has come on record.



8. It was further submitted that the chats exchanged between the deceased and her sister, Ms. Khushboo have also come on record and the said chats clearly demonstrate that the deceased was repeatedly beaten and harassed by the applicant. One of the said chats is dated 03.12.2021, i.e., only two weeks prior to the death of Ms. Kanchan. It was submitted that the mobile phone of Ms. Khushboo has been seized and sent to FSL for examination. Ms. Khushboo is yet to be examined before the learned Trial Court. It was submitted that in her statement recorded on 16.12.2021, under Section 161 of the CrPC, Ms. Khushboo reiterated that her mother, the complainant, has told her about the demand for Rs. 3 lakhs made by the applicant and his parents. She stated that she used to chat with her sister on WhatsApp and that her sister had informed her about the physical abuse faced by her at the hands of the applicant.

9. Learned APP submitted that since the messages indicating physical abuse faced by the deceased sent immediately before the death of Ms. Kanchan were not received by the complainant, whether the complainant had knowledge of the deceased having a phone or not is immaterial.

10. In support of his contentions, learned APP for the State placed reliance on Devender Singh & Ors. v. State of Uttarakhand, 2022 SCC OnLine SC 489, wherein it has been observed that the phrase ‘soon before her death’ used in Section 304B of the IPC is to be *“interpreted to mean proximate and to be linked with but not to be understood to mean immediately prior to the death”*.

11. Heard learned counsel for the parties and perused the record.

12. The case of the prosecution is built primarily on the statement of the complainant, i.e., the mother of the deceased and the chats exchanged



between the deceased and her sister, Ms. Khushboo. In her statement recorded before the learned SDM, and her subsequent statements recorded under Section 161 of the CrPC and thereafter, before the learned Trial Court; the complainant has stated that her daughter was physically and mentally abused by the applicant and his parents. She alleged that even though she had given Rs. 2 lakhs and jewellery at the time of marriage of her daughter, the applicant and his parents demanded Rs. 3 lakhs in the month of August 2021. It was alleged that on account of the complainant's inability to fulfil the said demand, her daughter was repeatedly abused and took her own life. It is further the case of the prosecution that the deceased was subjected to physical abuse on account of a demand for dowry soon before her death. To demonstrate the same, chats exchanged between the deceased and her sister, Ms. Khushboo have been placed on record wherein the deceased informed Ms. Khushboo that she was beaten by the applicant. It is also the case of the prosecution that the deceased had telephonically informed her mother about the physical and mental abuse that she was facing.

13. A perusal of the record reflects that the said chat and the statement of the mother of the deceased are the material relied upon by the prosecution to contend that the death of Ms. Kanchan was caused on account of a demand for dowry. The chat relied upon, as per the chargesheet, is dated 03.12.2022, however, the screenshot does not reflect any date. Be that as it may, even if the said chat is taken at its face value, a perusal thereof reflects that there is no mention of any demand for dowry. It is pertinent to note that the said chat, even as per the case of the prosecution, is contemporaneous to the period of the alleged demand for dowry. The fact that the said chat is silent about a



demand for dowry cannot be ignored at this stage. For the purpose of the present bail application, this fact has to be given its due consideration. Moreover, no call detail records have been placed on record to show that the deceased spoke with her mother, as claimed by the prosecution, around the time of her death.

14. As mentioned hereinabove, the parents of the applicant, against whom similar allegations have been made, have also been granted bail by the learned ASJ. The applicant has been in judicial custody since 17.12.2021. The investigation in the present case is complete and the chargesheet, as well as the supplementary chargesheet stand filed. The complainant, i.e., the mother of the deceased, has been examined and cross-examined. No useful purpose will be served by keeping the applicant in judicial custody any further.

15. In totality of the facts and circumstances, the present application is allowed and the applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 25,000/- alongwith one surety of the like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at Room No. 106, Khasra No. 1165-66, Court Wali, Kapashera, South West Delhi, Delhi - 110037. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.
- ii. The applicant shall not leave India without the prior permission of the learned Trial Court.



- iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
 - iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.
 - v. The applicant shall join the investigation, as and when required by the Investigating Officer.
 - vi. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.
16. The application stands disposed of along with all the pending application(s), if any.
17. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.
18. Copy of the judgment be sent to the concerned Jail Superintendent for necessary information and compliance.
19. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

AUGUST 02, 2023/sn