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

Reserved on: 10th February, 2023

Pronounced on: 17th February, 2023

+ **BAIL APPLN. 2537/2022**

SONU VERMA

..... Petitioner

Through: **Ms. Urvashi Bhatia, Advocate**

versus

THE STATE NCT OF DELHI

..... Respondent

Through: **Mr. Aman Usman, APP for the State
with S.I. B.K. Bharti, P.S. Najafgarh,
Delhi.**

**Ms. Astha, Advocate (DHCLSC) for
the complainant.**

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. Present application under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeks grant of regular bail in case FIR No. 94/2021 under Sections 498, 304-B read Section 34 of the Indian Penal Code, 1860 ('IPC'), registered at PS Najafgarh.

2. Briefly stated, the case of the prosecution relevant for adjudication of the present application is as under:

- i. On 21.02.2021, a PCR call was received at PS Najafgarh regarding the suicide of a lady. On reaching the spot, and after making relevant enquiries, it was revealed that the deceased Riya was wife of the

present applicant and she was married to the latter about 3 years ago. Accordingly, SDM of the area and the family members of the deceased were informed.

- ii. After the arrival of the SDM, deceased's father, Sh. Giriraj Singh and brother, Sh. Shiv Shankar gave a combined statement to the former on the basis of which the present FIR bearing no. 94/2021 is registered.
- iii. The contents of the said statement, as recorded in the status report dated 22.09.2022, are as under:

“After that, on the arrival of the deceased Riya's family members, they were presented before SDM Sir. Deceased Riya's father Giriraj Singh and brother Shiv Shankar S/o Giriraj Singh's combined statement was recorded which is as below: It is stated that we married our daughter/sister RIYA (21 years) W/o Sonu Verma R/o RZ 21/A Roshan Vihar, Najafgarh, New Delhi with dowry and Hindu Customs on 19.02.2018 to Sonu Verma, aged 34 years R/o RZ 21/A Roshan Vihar, Najafgarh, New Delh (rented accommodation), Village Sekhpura, Palwal Haryana. The parents of Sonu Verma resided at B-33, Ram Nagar, Mohan Garden, Uttam Nagar, New Delhi Riya has a son aged 1 year. Physical and mental cruelty, demands of gold, money and phone has been done continuously with our daughter after the marriage. Once she was threatened of divorce and second marriage, but there was also a reconciliation in Dwarka police station. There have been reconciliations at home also. We have not made any complaint anywhere till date, Wedding Anniversary party of Riya w/o Sonu Verma's was on 20/02/2021 when Sonu Verma had drunk liquor till late night at his house with his friends. We used to get to know about the cruelty on the phone when our daughter came to stay at our home. Quite often we have seen marks of beating on Riya's body. Riya also once gave a complaint in Dwarka police station which was taken back in their mutual reconciliation. We think Riya our daughter/sister's death is a murder. We want there should be a legal inquiry into the death of Riya. We have given the first statement in all our senses, this statement is absolutely true, we have heard and read it well.”

- iv. During investigation, the father of the deceased, Sh. Giriraj Singh gave supplementary statement under Section 161 of the Code of Criminal

Procedure (in short 'CrPC'), which is recorded in the status report dated 22.09.2022, is as under:

"I reside at the stated address with my son Shiv aged 27 years and work privately. I have three daughters and a son and Riya was my youngest daughter. I agree with my previous statement and state further that my daughter married Sonu Verma on 19.02.2018. Whatever items I had given from the wedding, I do not have any receipts and I have not given any complaint earlier regarding broadcasting from Riya to Sonu Verma or his family members (Mrs. Savitri Devi and Kishan Kumar who is the head of Sonu's house) or demanding dowry. According to my information, in respect of Riya being assaulted by Sonu, no medical report was even done. Whenever Riya came home, she used to tell that I had debt of ration in my in-laws. That I have paid money by selling my earrings, on account of Sonu's earnings, she used to tell me that due to lockdown he is unemployed and did not get the salary. In the account of his bank PNB Faridabad account, I had given a phone to Riya on installments only after taking the blue colour of OPPO phone whose number was 9310718248. I paid the instalments through my account. Sonu used to waste his earning in alcohol. Riya used to take money for the milk of Riya's child from me. That Riya told me about 3-4 days before the incident in the evening (around 5-6 PM) on my mobile number 881468299 that Sonu has taken a room on rent in another place but I have to sell my share in the paternal house. He is giving tremendous pressure to bring his share which has made by life difficult. She used to tell other things to my son Shiv and also to my elder brother Ramkishore Verma. My wife Mrs. Lajja Devi had passed away almost one and a half years ago. My daughter Riya has hanged herself due to non-payment of expenses from her in-laws' house. Justice should be given to me by taking strictest legal action against them."

- v. Statements of witnesses, including the relatives of the deceased, was recorded and chargesheet was filed under Section 498A/304B/34 of the IPC against the present applicant alongwith Kishan Kumar (maternal uncle) and Savitri (mother of the applicant).
- vi. The learned trial Court, *vide* order on charge dated 12.12.2022, discharged the above two co-accused persons and framed charges

against the present applicant under Sections 498A/304B of the IPC and in the alternate, under Section 306 of the IPC.

3. Learned Counsel appearing on behalf of the applicant submits that a bare reading of the FIR would demonstrate that the allegations leveled against the present applicant are general in nature and not a single incident has been alleged which would have any proximate connection with the cause of death of the deceased. It is urged that the allegations of dowry demand are general in nature and in fact, the complainant, in his statement recorded under Section 161 of the CrPC stated that he never filed any complaint with regard to the alleged torture meted out by the applicant and his family members. It is further pointed out that the only specific averment by the complainant with regard to extending financial support to the applicant was admittedly at the time of lockdown, on his own accord when the deceased informed the former about the applicant having lost his job. Learned counsel submits that the alleged demand of share in deceased's paternal property would not amount to dowry and relied upon the judgment passed by the Hon'ble Supreme Court of India in Baldev Singh v. State of Punjab (Criminal Appeal no. 1214/2008, decided on 04.08.2008), in support thereof.

4. It is further submitted that no complaint was filed at Dwarka Police Station, as mentioned in the statement of the complainant. In fact, a PCR call was made by the present applicant on 10.01.2021 from his phone as he apprehended one person, namely, Raja Ram in an inappropriate situation with the deceased at his residence. In pursuance of the said PCR call, it is stated that the family was called at PS Mohan Garden and the complainant and paternal uncle of the deceased forced the applicant into writing and signing a settlement stating that he mistook Raja Ram as some other person.

5. Learned counsel for the applicant has drawn the attention of this Court to the statement of one Neha Sharma, recorded under Section 161 of the CrPC, who was a neighbor, wherein she stated that the deceased, during one of the conversations between them, disclosed that the applicant was suspicious regarding the relation between the deceased and her sister's brother-in-law and on account of the same, he had vacated the earlier rented house in which they were living and shifted. It was stated that the deceased further confided in her that the applicant used to taunt the former for the said reason.

6. Learned counsel for the applicant also relied upon certain Whatsapp Chats between the deceased and one Raja Ram to demonstrate that the deceased was having relationship with the latter. It is further submitted by learned counsel for the applicant that the chargesheet in the present case has been filed, charges have been framed and no useful purpose would be served by keeping the present applicant in the judicial custody.

7. *Per contra* learned APP for the State assisted by the learned counsel nominated for the complainant from the Delhi High Court Legal Services Committee submits that the allegation in the statement of the complainant recorded under Section 161 of the CrPC states that that the deceased had informed the complainant, 3-4 days before the incident in the evening around 05.00-06.00 PM on his mobile number that the applicant had taken a room on rent and that he is putting tremendous pressure on the deceased to sell her share in the paternal house. It is submitted that this would bring the case of the prosecution under Section 304B of the IPC and this would amount to demand of dowry soon before death.

8. Learned APP for the State relies upon the judgment passed by the Apex Court in State of Madhya Pradesh v. Jogendra & Anr., 2022 LiveLaw (SC) 37, to say that the demand of share in the property would amount to dowry. It is further submitted that that in view of the charges framed under Section 304B of the IPC, the presumption under Section 113B of the Indian Evidence Act, 1872 would come into play and onus would shift on the applicant. It is further submitted that the main witness i.e. father of the deceased and other family members are yet to be examined and therefore the present application should be dismissed.

9. Heard learned counsel appearing on behalf of the parties.

10. The marriage between the deceased and the applicant was solemnized on 19.02.2019 and a child was born out of the said wedlock. The applicant and deceased wife were admittedly living in a rented accommodation, separately from his family members.

11. In the first statement given by the father and brother of the deceased, the allegation was that the deceased was being treated with both physical and mental cruelty by the applicant and after marriage, there was a constant demand of gold, money and a phone by the applicant. It was also alleged that the applicant, under the influence of alcohol, used to beat the deceased.

12. Subsequently in a supplementary statement of the father of the deceased, an additional allegation was made with respect to demand by the applicant to the deceased for bringing her share from sale of her paternal home. This alleged demand is stated to have been informed by the deceased to the complainant 3-4 days before the incident. It is also a matter of record that just before the evening of the date of incident, i.e., 20.01.2021-21.01.2021, the applicant and the deceased celebrated their wedding anniversary by

calling over the friends and relatives of the applicant. It has also come on record, by way of a status report dated 17.10.2022, authored by Insp. Ajay Kumar, SHO, PS Najafgarh, that on 10.01.2021, a PCR call was made by the applicant stating that he has caught his wife with some other person and after that the parties came to the police station and amicably settled the matter in presence of the family of the deceased. It is stated that the applicant had given a statement saying one of his wife's sister-in-law's relative, namely, Raja Ram was present in his absence and when he saw him, he made the PCR call due to some misunderstanding. It is further stated in the said status report that the mobile phone of the deceased has been sent to FSL and the result with regard to the same is still awaited.

13. It is pertinent to note that in the present case, the initial statement given by the father and brother of the deceased was with respect to present applicant treating the deceased with physical and mental cruelty and general allegations with respect to demand of gold, money and phone. It is also alleged that they suspected her death to be murder. In the supplementary statement recorded under Section 161 of the CrPC, of the father and brother of the deceased, additional allegations surfaced with respect to the present applicant, his mother and maternal uncle (*mausa*), who have now been discharged by the learned trial Court. It is further noted that the father of the deceased does not say that any demand was made by the applicant from him. As per the learned counsel for the applicant, even the demand with respect to the share of the deceased in her paternal house, as claimed by the father of the deceased, is contrary to the statement given by paternal uncle of the deceased (*tauji*). It is pointed out by learned counsel appearing on behalf of the applicant that in the statement made by the father of the deceased that the alleged demand was

communicated by the latter to him over the phone, 3-4 days before the incident but in the statement of the paternal uncle, it is stated that in second week of January, 2021, the deceased was not allowed to enter into her matrimonial home by the applicant, stating that she should get her share from her father's property and only then he would allow her to enter the said matrimonial home.

14. Be that as it may, whether the allegations made by the complainant in the second supplementary statement with respect to the alleged demand of dowry soon before death would amount to an improvement and therefore be disregarded is a matter of trial. At this stage, while considering an application for bail, this Court cannot determine whether the said allegation be disregarded as an improvement or not, as the same is a matter of trial. However, the fact remains that in the first statement given by the complainant, these allegations were not there.

15. This Court is conscious of the provisions of Section 304B of the IPC and the presumption under Section 113B of the Indian Evidence Act, 1872, in such cases. However, at the same time, while considering the application for bail of the present applicant, the aforesaid factor of an allegation being made in a subsequent statement will have some bearing.

16. Admittedly the chargesheet has been filed, charges have been framed and the matter is fixed for prosecution evidence. The apprehension on the part of the prosecution that the applicant will influence the witnesses is not substantiated by any material or otherwise.

17. In view of the facts and circumstances of the present case, the application is allowed.

18. The applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 50,000/- alongwith one surety of 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 House No. B-33, Ramnagar, Near PNB Bank, Om Vihar, Uttam Nagar, New Delhi. The applicant is directed to reside at the same address. In case of any change of address, the applicant is directed to inform the same to the Investigating Officer.
- ii. The applicant shall not leave the India without the prior permission of the 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 witness in any manner.

19. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.

20. The application is allowed and disposed of accordingly alongwith all the pending application(s), if any.

21. Let a copy of this order be communicated to the concerned Jail Superintendent.

AMIT SHARMA
JUDGE

FEBRUARY 17th, 2023/bsr