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

+ **BAIL APPLN. 2956/2023**

POONAM @ POOJA @ PRIYA Applicant

Through: Mr.Kanhaiya Singhal, Mr.Anmol Chopra and Mr.Tukesh Singhal, Mr.Ujwal Ghai, Mr.Prasanna, Mr.Ajay Kumar, Mr.Udit Bakshi and Ms.Deepali Pawar, Advts.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr.Amit Sahni, APP for the State. SI Ashok Kumar, PS Civil Lines

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Date of Decision: 04.09.2023

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 23783/2023 (exemption)

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

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1. The present application has been filed under Section 439 read with Section 482 Cr.P.C. seeking grant of regular bail in case FIR no.495/2021 registered under Section 306/34 IPC at PS Civil Lines. Section 174A of IPC was subsequently added in the charge sheet. The petitioner is in custody since 06.08.2022.
2. Briefly stated, the present FIR was lodged by Smt. Shanti Devi, mother of the deceased Manoj. In the complaint, it has been alleged that her son was married to Smt. Poonam @ Priya on 23.01.2011. Out of the wed-lock, two children were also born. It has been alleged that her son came to know that his wife had extramarital relations with a person namely Neeraj i.e. the applicant, on account of which there was regular quarrel between the two. It was further alleged that Poonam ran away with the applicant. Moreover, it is alleged that on 01.09.2021 at around 8 p.m., when the deceased, Manoj, came back home, he appeared to be under great stress. On being asked, he stated that Poonam had threatened him to transfer the ownership of the house to her failing which she will implicate the elder brother and father of the deceased, in a rape case and will also implicate other members of the family in the dowry case. The complainant alleged that thereafter the deceased, Manoj, went into his room and committed suicide by hanging.
3. Learned counsel for the applicant submits that in ***K.V. Prakash Babu vs. State of Karnataka***, (2017) 11 SCC 176, the Hon'ble Supreme Court has in *inter-alia* held that if the husband gets involved in an extra-marital affair that may not in all circumstances invite conviction



under Section 306 of the IPC but definitely that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. Learned counsel for the applicant further submits that the co-accused namely Neeraj Kumar @ Neeraj with whom the applicant had allegedly absconded has already been admitted to bail by this court vide order dated 18.07.2023. Learned counsel for the applicant has also submitted that in fact only on the day of the incident, the present applicant had lodged a complaint before the SHO, PS Civil Lines alleging therein that the deceased was alcoholic and physically assaulted her. It was further stated by the applicant in the said complaint that on account of the behavior of the deceased, she had been residing separately.

4. Issue notice. Learned APP has accepted the notice.
5. Learned APP has vehemently opposed the bail application. He submits that the deceased had also lodged a complaint against co-accused Neeraj vide DD No.23A dated 29.06.2021 at PS Civil Lines. It has further been submitted that the complaints filed by the father of the co-accused Neeraj and the present applicant were after the filing of the complaint by the deceased Manoj Kumar. Learned APP has also submitted that the suicide note and complaint have been sent to FSL for expert opinion and the result has been received. As per the report, the handwriting of the suicide note is of the deceased Manoj Kumar. Learned APP has also submitted that the role of the present applicant is



different from the co-accused Neeraj who has been admitted to bail and therefore the bail may not be granted.

6. This court while dealing with the application of co-accused Neeraj has *inter-alia* held as under:

“5. The ingredients for attracting S.306 for which evidence is required to be led include the intentional instigating a person into committing suicide. Such instigation refers to abetment which is a mental process thereby, requires the accused to possess mens rea. Existence of such intention is detected by the actual actions of the accused which must constitute a positive provocation, incitement or encouragement towards committing suicide. There must proof of such abetment in proximity to the time of incident. In the present case the marriage is of 2011 and the unfortunate incident occurred in 2021. At this stage, the court has to see only the prima facie case. The court considers that evidence is required to be appreciated for evaluating instigation, provocation, incitement or encouragement. Reliance may be placed on S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190 and Ude Singh & Ors. v. State of Haryana (2019) 3 SCC 315.

6. The law regarding grant or refusal of bail is very well settled. While deciding a bail, the court has to take into account the necessary ingredients as under:

- a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- c) Prima facie satisfaction of the court in support of the charge.*

7. It is a settled proposition that at the stage of bail the court cannot meticulously examine the facts of the case, nor can it go into the probative value of the witnesses. Since the charge sheet has already been filed, there is remote possibility of threatening



the witnesses or tampering with the record. The trial is yet to take place. At this stage, it would not be proper to make any comment about the merits of the case.”

7. The role of the present petitioner is different from co-accused Neeraj. However, the court at this stage is only required to see the prima facie case. Thus, taking into account the totality of the facts and circumstances, and taking into account the prima facie case, the applicant is admitted to regular bail on furnishing a personal bond in the sum of Rs.20,000/- with one surety of the like amount subject to the satisfaction of the trial court, and subject to the following conditions:
 - a) the applicant shall appear before the Ld. Trial court regularly;
 - b) the applicant shall under no circumstances leave India without prior permission of the Court concerned;
 - c) the applicant shall not directly or indirectly contact or make any inducement, threat, or, promise to the victim or the victim's family members or to any person acquainted with the facts of the case;
 - d) the applicant shall provide his mobile number(s) to the Investigating Officer/SHO and keep it operational at all times; and
 - e) in case of a change of residential address and/or mobile number, the applicant shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
8. However, it is clarified that this court has not gone into the merits of the case and no expression made herein shall tantamount to be an expression on the merits of the case.
9. The present bail application stands disposed of.



10. A copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

DINESH KUMAR SHARMA, J

SEPTEMBER 4, 2023

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