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

+ **BAIL APPLN. 42/2022**

SHOBHA

..... Petitioner

Through: Mr. Manu Sisodia and Ms. Hina
Rajput, Advs.

versus

THE STATE

..... Respondent

Through: Mr. Raghuwinder Verma, APP for the
State with IO Deepak Kumar, PS
Burari.

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Date of Decision: 3rd February, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present application has been moved under Section 438 Cr. P.C. seeking grant of anticipatory bail in case FIR No. 764/2021 under Section 304B/34 IPC registered at PS Burari. The said FIR was lodged by Smt. Sevti, i.e. mother of the deceased on 12.09.2021.
2. Learned APP for the State submits that the charge sheet in the present case has already been filed against the husband and the father-in-law. Learned APP for the State submits that since the petitioner herein has

not been arrested, the investigation against her is still continuing and the supplementary charge sheet shall be filed.

3. During the course of the hearing, learned APP for the State on the basis of the instructions received from the IO states that the only allegations against the petitioner herein has appeared in the statement of Vinod Kumar recorded on 12.09.2021. In his statement Vinod Kumar stated that the deceased had told him on the telephone that on 17.02.2021, her mother-in-law i.e. the petitioner herein had beaten her and told her that “*we robbed you cheaply as we would like, what will you guys do.*”
4. The attention of this Court has also been invited to an earlier order passed by this Court on 13.01.2022 which reads as under;

“ The status report dated 10.1.2022 under Signatures of the SHO Police Station Burari has been submitted.

On behalf of the applicant it has been submitted that there were only omnibus allegations levelled against the applicant and that the applicant is not at all in any manner involved in the commission of the offences punishable under Sections 304B/498A of the Indian Penal Code, 1860 qua the deceased.

It has inter alia been submitted on behalf of the applicant that even as per the status report that has been submitted by the State, the only allegations against the application are to the effect that on 17.2.2021 the applicant, the mother-in-law of the deceased had beaten the deceased and had also scolded her for not bringing sufficient dowry articles submitting thus that the same were insufficient to bring forth any proximity qua the alleged commission of an offence punishable under Section

304B of the Indian Penal Code, 1860 with no act attributed against the applicant.

On behalf of the State, the learned AFP for the State has placed reliance on the status report and the statements of witnesses that have been recorded i.e. Vinod Kumar, the brother of the deceased and of Sewati, the mother of the deceased.

Without any observations on the merits or demerits of the trial or the averments that have been made in the said statements recorded under Section 161 of the Cr.P.C., 1973 in as much as the statement of Vinod the brother of the deceased makes specific reference to a call received on 17.2.2021 by him from his sister, the deceased, with allegations being levelled by the deceased against the applicant herein, coupled with assertions made in the statement under Section 161 of the Cr.P.C., 1973 by the mother of the deceased that on 11.9.2021 at about 11 a.m. the deceased had telephoned her mother that she was being harassed and assaulted for dowry demands by all persons there and that if the mother wanted to save the deceased she should send her brother to her home which is on which date the deceased is alleged to have committed suicide, in these circumstances, it is considered essential that the CDR details of the alleged calls between the deceased and Vinod, her brother, on 17.2.2021 and the call dated 11.9.2021 between the deceased and her mother at around 11 a.m. be verified by the State before proceeding further. The matter is directed to be renotified for the date 10.2.2022.”

5. In pursuance of the order dated 13.01.2023, this Court vide order dated 14.03.2022, directed the State to place on record the location qua the CDR details that have been submitted both for the date i.e. 11.09.2021 and the call dated 17.02.2021.

6. Learned APP for the State submits that as per the status report, on 17.02.2021, the location of the mobile phone of the deceased was at Village Jatoli Meerut Post Jatoli Thana Kankarkheda Tehsil Meerut District Meerut, U.P.
7. Let this status report be taken on record. The IO has submitted that during the course of the investigation, the petitioner has joined the investigation as and when directed.
8. It is a settled proposition that the basic rule of criminal jurisprudence is bail and not jail. The Supreme Court and this court have time and again held that the courts must enforce this principle in practice. It is also settled law that denial of bail amounts to deprivations of personal liberty. It is however imperative to bear in mind that the considerations governing the exercise of discretion for granting anticipatory bail are materially different from those of an application for bail. Anticipatory bail is not to be granted as a matter of rule, it should be granted when the Court is convinced that the person would not misuse his liberty.
9. This court deems it appropriate to reiterate that the discretion vested under section 438 Cr. P. C. should be exercised with care and circumspection depending upon the facts and circumstances of each case justifying its exercise. Thus, the discretion vested should be exercised with caution and prudence. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. The grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As observed in ***Gurbaksh Singh Sibbia vs State of Punjab***, AIR 1980 SC

1632 and reiterated in a catena of other judgements, the Courts must exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion, which by their long training and experience they are ideally suited to do.

10. The Supreme Court in *Siddharam Satilingappa Mhetre vs. State of Maharashtra* (2001) 1 SCC 694, while considering a matter relating to grant of anticipatory bail and after exhaustively analysing the rights under Article 21 *inter alia* held that great ignominy, humiliation, and disgrace is attached to an arrest. It was further held that an arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community.

11. Taking into account of the totality of facts and circumstances of the present case, the petitioner, in the event of arrest be admitted to anticipatory bail on furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the Trial Court /Investigation Officer/SHO subject to the following conditions:

- a) the petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
- b) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;

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- c) the petitioner shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
- d) the petitioner shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer; and
- e) in case of change of residential address and/or mobile number, the petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

12. The bail application stands disposed of in the above terms.

DINESH KUMAR SHARMA, J

FEBRUARY 3, 2023

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