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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 06th February, 2023

Pronounced on: 15th February, 2023

+ BAIL APPLN. 3475/2022

SURAJ MALIK

..... Petitioner

Through: Mr. R.S. Malik, Mr. Sahil Malik,
Mr. Sidhant Ranta, Advocates.

versus

THE STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Utkarsh, APP for the State with
S.I. Sukhvir Singh, P.S. Paschim Vihar
West.

Mr. Ravinder Singh, Advocate for
deceased's parents.

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. 591/2022 under Sections 498A/306/34 of the Indian Penal Code, 1860 ('IPC'), registered at PS Paschim Vihar, Delhi.

2. Briefly stated, the facts of the prosecution case are as follows:

- i. On 27.06.2022, a PCR call was received at PS Paschim Vihar, Delhi, stating that one patient, namely Shefali (deceased), has been admitted on account of burn injuries. Subsequently, the deceased was referred to Safdarjung Hospital for further treatment.

- ii. On reaching the hospital, it was revealed that the victim/Shefali got married on 23.11.2021, which was less than seven years and therefore, SDM Punjabi Bagh was informed about the same. On receipt of information, SDM Punjabi Bagh reached Safdarjung Hospital and recorded the statement of the patient, namely Shefali Malik (deceased), wherein she stated:

“मेरा नाम शेफाली मलिक है। मेरे पति का नाम सूरज मलिक है। मेरी शादी सूरज मलिक से 23/11/2021 को हुई थी। मेरी उम्र 28 वर्ष है। मैं 35 पश्चिम एनक्लेव, पश्चिम विहार अपने ससुराल में थी आज। मैं petrol लाई खुद और मैंने अपने उपर petrol डाल कर आग लगा ली क्योंकि मैं जीना नहीं चाहती। मेरी सास मुझे बहुत परेशान करती थी। दहेज नहीं माँगती थी पर बात बात पर सुनाती थी। पति भी बहुत गाली गलोच करते थे। ससुर नहीं है। ननद है। उससे मुझे कुछ शिकायत नहीं। वह कुछ नहीं कहती थी मेरी सास ने ही मुझे बहुत परेशान किया जिसके कारण मैं जीना नहीं चाहती।”

The English translation of the said statement is as under:

“My name is Shefali Malik. My Husband's name is Suraj Malik. I got married to Suraj Malik on 23.11.2021. My age is 28 years. I was at 35, Paschim Enclave, Pashchim Vihar, at my matrimonial home today and I got petrol and poured the same on myself and set myself on fire because I do not want to live. My mother-in-law harasses me. She does not demand dowry but she constantly taunts me. My husband, Suraj Malik, abuses me. Father-in-law is not there. Sister-in-law is there. I do not have any complaint against her as she does not say anything. My mother-in-law harasses me because of which I do not want to live.”

- iii. Consequently, FIR 591/2022 under Sections 498/306/34 of the IPC was registered and investigation was taken up.
- iv. During the course of the investigation, statement of parents of the deceased, i.e., Sh. Krishan Kumar Khanna and Smt. Ranjana Khanna was recorded by the SDM, Punjabi Bagh, in which they alleged that husband and mother-in-law of the deceased harassed their daughter and demanded dowry. They alleged that the present applicant and his mother, i.e., Smt. Sunita Malik, burned their daughter Shefali.
- v. In the statement, the father of the deceased also mentioned that it was deceased and applicant's second marriage, which they conducted with great pomp and show on 23.11.2021, by spending approximately Rs. 20,00,000/-.
- vi. It is further stated that in February 2022, the deceased told her parents that her in-laws are demanding Rs. 25,00,000/- and therefore, they had given cash in the sum of Rs. 10,00,000/- to the deceased.
- vii. It is also stated that the deceased got pregnant in April but her in-laws gave her medicine and got her aborted as the applicant, who already has a son from his previous marriage, did not want to have another child.
- viii. It is further stated that on 26.06.2022, the deceased received her pregnancy report, which was positive, and she informed about the same to her parents on the next morning.
- ix. It is also alleged that on the applicant being informed about the pregnancy, he stopped talking to the deceased and despite her not being well, fought with her.
- x. It is further alleged that the applicant started demanding Rs. 15,00,000/- which were pending, on the night of 26.06.2022.

- xi.** After the completion of investigation, chargesheet was filed before the Court of competent jurisdiction, and *vide* order dated 21.01.2023, the learned trial Court framed charges against the present applicant and his mother under Sections 498A/304B/34 of the IPC and in the alternate charge under Sections 306/34 of the IPC.
- 3.** Learned counsel for the applicant submits that the statement made by the father of the deceased is in total variation to the dying declaration given by the deceased before the SDM, wherein it is categorically stated by her that although she has been harassed by her mother-in-law and the applicant but there has not been any demand of dowry. It is further submitted that it was the second marriage of both, the applicant and the deceased, and that the deceased was not happy with her matrimonial life.
- 4.** It is further submitted that the statement made by the parents of the deceased were deliberately made so that Section 304B could be added to the FIR, since the initial FIR was registered under Section 306 of the IPC. Further, the learned counsel for the applicant submits that even Section 306 would not be made out as there were no allegations with respect to any instigation or abetment to suicide against the present applicant. It is further submitted that even in the statement of the parents of the deceased, no specific allegation with regard to the conduct of the applicant demonstrating that he abetted or instigated the deceased to commit suicide were made.
- 5.** Learned counsel appearing on behalf of the applicant has also drawn the attention of this Court to the statement by one Mr. Kaveshwar Singh, who was the neighbor of the applicant and had taken the deceased to the hospital. It is submitted that in the said statement it has been recorded that the parents of the deceased arrived at Safdarjung Hospital and started quarreling with the

present applicant and his family members and thereafter, the deceased told them that the present applicant will stay with her. It is submitted that the said statement shows that even at that time, the deceased had faith in the present applicant.

6. Learned counsel also submits that investigation in the present case is complete and chargesheet stands filed, therefore, no useful purpose will be served by keeping the present applicant in judicial custody. It is further asserted that the applicant has roots in society and owns a shop in Nangloi. He has a four year old son from previous marriage to look after. He has been in judicial custody since 28.06.2022.

7. Learned counsel appearing on behalf of the applicant relies upon the following decisions:

- i. Ranjeet Singh v. State, 2005 (2) J.C.C. 905
- ii. Kamal @ Kailash Joshi v. State, 2007 I.A.D. (Delhi) 31
- iii. Nitin Kumar v. State, 2015 IVAD (Delhi) 109
- iv. Deepak v. State, 120 (2005) D.L.T 146

8. *Per contra*, learned APP for the State, assisted by learned counsel for the deceased's parents, submits that the allegations made by the parents of the deceased are very grave in nature. There is specific and clear demand of dowry with regard to the applicant. It is further submitted that on the morning of the incident, the deceased had called her father and conveyed the demand being made by the present applicant and also conveyed the manner she was being treated on account of her pregnancy.

9. It is further submitted that even in the dying declaration made by the deceased, she categorically states that she was being harassed by the applicant and his mother.

10. It is further submitted that the charges under Sections 498/304B/34 and in the alternate 306/34 of the IPC have already been framed in respect of applicant and his mother.

11. It is submitted that the parents of the deceased are to be examined by learned trial Court and therefore, in view of the aforesaid reasons, the present bail application should be dismissed.

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

13. The applicant got married to the deceased on 23.11.2021 and admittedly, it was their second marriage.

14. It is pertinent to mention that the dying declaration of the deceased is an important piece of evidence in the present case. Learned counsel appearing on behalf of the applicant submits that the allegation with respect to invoking the provision of Section 304B of the IPC, made by the parents of the deceased, cannot be looked into as it is diametrically opposite to the statement given in the dying declaration by the deceased with respect to demand of dowry.

15. Perusal of the said dying declaration which has been reproduced hereinabove categorically states that there was no demand of dowry, in fact, the deceased while alleging that her mother-in-law harassed her, clarifies the same by saying that she does not demand dowry but continues to taunt her. The allegation with respect to her husband is regarding verbal abuse, and in the end she states that she does not want to live because of the harassment by her mother-in-law.

16. On the other hand, the statement of the parents of the deceased recorded after registration of the FIR, alleges that in-laws of their daughter

had demanded Rs. 25,00,000/- out of which Rs. 10,00,000/- have already been paid.

17. Perusal of the aforesaid dying declaration made by the deceased reflects that the deceased was not happy at her matrimonial home, more specifically, with her relation with her mother-in-law, but at the same time the fact that she did not make any allegation with respect to demand of dowry made by the present applicant cannot be lost sight of.

18. Whether the statement made by the father of the deceased with respect to the demand of Rs. 25,00,000/- by the applicant and his mother or whether Rs. 10,00,000/- cash was paid to the applicant is a matter of trial, which the prosecution need to prove by leading evidence in support thereof.

19. Chargesheet has been filed and charges have been framed in the present case. Matter is fixed for prosecution evidence.

20. So far as the plea of the prosecution is concerned with regard to the present applicant threatening or influencing the witness or evading the trial, no material has been placed on record to substantiate the same.

21. Applicant is in judicial custody since 28.06.2022 and no useful purpose will be served by keeping the applicant in judicial custody any further.

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

23. The applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand) alongwith one surety of the like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following terms and conditions:

- i. The memo of parties shows that the applicant is residing at H. No. 35, Paschim Enclave, New Delhi. 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*.
- 24.** Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.
- 25.** The application is allowed and disposed of accordingly alongwith all the pending application(s), if any.

भारतमेव जयते

**AMIT SHARMA
JUDGE**

FEBRUARY 15th, 2023/sn