



\$~78

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 125/2024 & CRL.M.A. 1017/2024**
KAPIL YADAV Applicant

Through: Mr. Sunil Dalal, Senior
Advocate with Mr.
Inderpreet Singh, Ms.
Manisha and Mr. Tushar
Rohmetra, Advs.

versus

STATE GOVT. OF NCT OF DELHI Respondent
Through: Mr. Pradeep Gahalot, APP
for the State with Insp. L.
N. Saini and SI Naveen,
PS Palam Village.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
07.03.2024

%

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 (**CrPC**), seeking regular bail in FIR No. 318/2022 dated 21.06.2022, registered at Palam Village, for offences under Sections 304B/498A/34 of the Indian Penal Code, 1860 (**IPC**).

2. The present FIR was registered at the instance of Sh. Vijay Kumar, father of the deceased, namely, Pushpalata, against her husband, namely, Kapil Yadav / applicant, and his family members, alleging that the deceased was subjected to harassment and cruelty by her husband and his family members.

3. On 12.05.2022, an information was received *vide* DD No. 87A in respect of the suicide attempt by the wife of the applicant (deceased) by hanging herself to a ceiling fan. She was thereafter taken to the hospital by her husband wherein she was declared unfit for giving a statement. Her In-Laws simultaneously informed the complainant about the said incident and asked him to come to Delhi. Since the deceased had been married only for



about one year, the SDM was informed.

4. It is alleged by the complainant that the deceased and the applicant got married on 26.04.2021. The deceased was subjected to cruelty and harassment and was also tortured for dowry within a few days of marriage. A car and ₹2,00,000/- were demanded by the applicant and his parents and they even tried to strangle the deceased. The complainant's daughter died after forty days of hospitalization, that is, on 21.06.2022.

5. The complainant alleged that his daughter had been killed by the applicant and his parents which led to the registration of the present FIR.

6. During the course of the investigation, the statements of the family members of the deceased were recorded under Section 161 of the CrPC wherein they made specific allegations against the husband/ applicant, Mother-in-Law, and Father-in-Law of the deceased. It was alleged that the deceased was harassed by the applicant and her In-Laws for dowry. They demanded a car and ₹2,00,000/- and often taunted her and even tried to strangle her. Due to the alleged behavior of the applicant and his parents, the deceased was compelled to commit suicide.

7. The applicant was arrested on 22.06.2022 and the co-accused Shri Satya Narayan (Father-in-Law of the deceased) and Shrimati Suman (Mother-in-Law of the deceased) were arrested on 14.10.2022.

8. On 17.08.2022, the charge sheet in the present case has been filed *qua* the applicant under Sections 304B/498A/34 of the IPC.

9. *Vide* order dated 13.10.2022, the learned Additional Sessions Judge-2, Dwarka Courts, Delhi, passed the order on charge *qua* the applicant under Sections 304B/498A/34 of the

BAIL APPLN. 125/2024

Page 2 of 8



IPC.

10. The applicant had preferred two bail applications before the learned Trial Court, which were dismissed, firstly, on 12.07.2023 and, then on 18.12.2023. Being aggrieved, the applicant has preferred the present application.

11. The learned senior counsel for the applicant submits that the applicant and the deceased shared a good relationship with each other and she never complained of any altercations or disputes. The allegations of cruelty and demand for dowry are made for the first time in the present FIR. He submits that there was no demand for dowry by the applicant or any of his family members soon before the death of the deceased.

12. He submits that the deceased shared a cordial relationship with her in-laws and they used to encourage her to pursue her further studies. Furthermore, they were the ones who on seeing the deceased hanging from the fan, untangled her, rushed her to the hospital, and attended to her needs during her hospitalisation.

13. He submits that the deceased committed suicide due to her hyper and sensitive nature which is evident from the fact that on an earlier occasion also, she tried to pressurize the applicant by cutting her wrist and uploading its photograph on WhatsApp. The said fact was duly admitted by the complainant during his examination before the learned Trial Court.

14. He submits that the testimonies of all the material witnesses have already been recorded in the present case, and there is no likelihood of the applicant influencing the witnesses. He further submits that there are inherent contradictions in the testimony of the complainant recorded before the learned Trial Court as only vague allegations are made against the applicant without attributing any specific role in the alleged incident or



stating any date/time where any such incident happened.

15. He submits that even though the complainant had met the SDM on the fateful day on which her daughter committed suicide i.e., on 12.05.2022, however, he did not raise any grievance on the said day and had only lodged the complaint after the death of her daughter.

16. He submits that the investigation is complete and the chargesheet has already been filed. He states that as per the FSL Report, nothing incriminating has been found against the applicant. He further submits that the co-accused persons, being the parents of the applicant, have already been enlarged on bail by orders dated 23.05.2023 passed by the learned ASJ-02, Dwarka Courts, New Delhi. Therefore, the applicant is entitled to be released on bail on the ground of parity.

17. *Per contra*, the learned Additional Public Prosecutor for the State opposes the grant of bail to the present applicant on the ground that there are serious allegations against him. It is pointed out that the deceased suffered harassment at the hands of the applicant and his family members and was compelled to commit suicide because of their behaviour.

18. The learned Additional Public Prosecutor for the State further submits that by virtue of Section 113B of the Indian Evidence Act, 1872, there is a presumption against the applicant that he caused death owing to the demand for dowry.

19. I have heard learned counsel for the parties and have perused their record.

20. It is not in dispute that the allegations made by the complainant are that of demand for a car and ₹2 lakhs from the deceased. It is further alleged that accused persons harassed her on several occasions which led to the deceased committing



suicide.

21. However, it cannot be disputed that there is no previous complaint against the applicant with respect to alleged harassment in relation to the demand for dowry. The statements of the family members of the deceased are also bereft of any particulars in terms of the date or time with regard to the instances of demand for dowry.

22. It is not denied that even though an incident of attempt to commit suicide took place on 12.05.2021, no complaint or allegation was made by the complainant till 21.06.2021.

23. The complainant has also stated in his testimony that he cannot tell any date, month, or an occasion as to when the demand of ₹2,00,000/- and for a car was raised by the applicant and his family members. He also has not been able to say as to which of the accused persons demanded the money and a car.

24. Section 304 of the IPC reads as under:

“304B. Dowry death. -- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation: For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

25. The basic ingredient to attract presumption in terms of Section 304B of the IPC is that the death should have occurred under circumstances which are not normal within seven years of her marriage and the victim was subjected to cruelty or

BAIL APPLN. 125/2024

Page 5 of 8



harassment by her husband or any of her husband's relative in connection with any demand for dowry soon before the death.

26. It is not a case of the prosecution that the applicant or his family members have been alternatively charged for offences under Section 302 or 306 of the IPC. In fact, the other co-accused persons are stated to have been enlarged on bail by the learned Trial Court. As pointed out by the learned counsel for the applicant, at this stage, the FSL Report does not point out towards any incriminating material against the applicant.

27. It is pointed out that only 10 out of 20 prosecution witnesses have been examined. It is, however, not disputed that all the prime witnesses have been examined. The Hon'ble Apex Court in *Sajid Khan v. State of Rajasthan & Anr.: SLP (Crl.) No. 2290/2023* had granted bail to the accused husband charged for offences punishable under Section 498A and 304B of the IPC considering that all the vital witnesses have been examined and the accused husband was in custody for around 15 months. It was noted that conclusion of the trial will take some time.

28. The object of judicial custody is to secure the presence of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. Delay in the commencement and conclusion of the trial is a factor to be taken into account and the accused cannot be kept in custody for an indefinite period if the trial is not likely to be concluded within a reasonable time. The presence of the accused can be secured at the time of trial by putting appropriate conditions.

29. Therefore, in the above circumstances, in the absence of any specific allegation of demand of dowry or causing harassment to the deceased soon before her death in connection



with any demand of dowry; and considering that the applicant has been in custody since 22.06.2022; and the fact that the chargesheet has already been filed, I am inclined to grant bail to the present applicant. Any apprehension of the applicant absconding or fleeing can also be taken care of by putting appropriate conditions.

30. Without commenting further on the merits of the case, keeping the facts and circumstances in mind and the fact that the trial is likely to take some time, I am satisfied that the applicant has made a case for the grant of regular bail.

31. In view of the above, the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹50,000/- with two sureties of the like amount to the satisfaction of learned Trial Court / Duty MM / Link MM on the following conditions:

- a. The applicant shall not leave the country without prior permission of the learned Trial Court;
- b. The applicant shall cooperate in the trial and appear before the learned Trial Court as and when directed;
- c. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case;
- d. The applicant shall not, in any manner, try to contact any of the witnesses;
- e. The applicant shall provide his mobile number to the concerned Investigating Officer /SHO at the time of his release and the mobile shall be kept in working condition at all times;
- f. The applicant shall, in case of change of residential address and/or mobile number, intimate the concerned Investigating Officer regarding the same.



32. In the event of there being any FIR/DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an appropriate application for cancellation of bail.

33. It is also made clear that the observations made in the present case are only for the purpose of considering the bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

34. The present application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

MARCH 7, 2024 / UG