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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 304/2024

RAGHUBIR SINGH @ RAGHUVVEER SINGH

MEHTO

..... Petitioner

Through: Mr. Chayan Sarkar and
Mr. Shailendra Kumar,
Advs.

versus

STATE OF NCT OF DELHI THROUGH SHO

MADHU VIHAR POLICE STATION, EAST

DELHI & ANR.

..... Respondents

Through: Mr. Utkarsh, APP for the
State with Insp. Sandeep
Rathi, PS Madhu Vihar.
Mr. Sunil Kumar, Mr.
Prashant Rana and Mr.
Shubham Thakur, Adv.
for the complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

07.03.2024

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1. The present petition is filed under Section 439 of the Code of Criminal Procedure, 1973 (**CrPC**), seeking grant of regular bail, in FIR No. 315/2023 dated 08.07.2023, registered at Police Station Madhu Vihar, for offences under Sections 498A/302/304B/34 of the Indian Penal Code, 1860 (**IPC**).
2. The FIR was registered on a complaint given by the brother of the deceased.
3. It is stated that the marriage between the complainant's sister and the son of the applicant took place on 27.04.2021. It is alleged that soon after the marriage, the deceased was subjected

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to cruelty and physical assault by her husband and his family members on a regular basis.

4. It is alleged that on 05.07.2023, at around 10:00 p.m., the deceased was beaten and was confined in a room. Thereafter, when her health deteriorated, she was taken to GTB Hospital on the same day.

5. The deceased succumbed to her injuries on 07.07.2023.

6. It is alleged that the deceased was threatened on a regular basis by her husband and his family members. On 08.07.2023, the complainant was informed by his other sister that the deceased was beaten by her husband and his family members.

7. The postmortem of the deceased was conducted on 09.07.2023 which revealed fifteen external and various internal injuries that had been inflicted on the deceased. The opinion in the postmortem report stipulated that the death of the deceased occurred due to coma as a result of antemortem cerebral damage consequent upon blunt force impact to the head and all injuries were antemortem in nature and produced by blunt force.

8. During the course of investigation, subsequent opinion from the autopsy surgeon on the postmortem report was also obtained, which showed that various injuries were caused three to four days prior to the death and these injuries were inflicted by hitting the head of the deceased on the wall and by slapping her.

9. The charge sheet in the present case has already been filed.

10. On the receipt of the present complaint, enquiry under Section 176 of the CrPC was initiated and the statement of the complainant was recorded. In the said statement, it was stated that the deceased was 8 months' pregnant and was constantly beaten by her husband under the influence of alcohol. It was also stated that on 05.07.2023, the other sister of the complainant had



received a video-call from the deceased at around 12 midnight, in which she was crying a lot and told her that her husband had beaten her and she was in a lot of pain and was also vomiting.

11. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the applicant is the Father-in-Law of the deceased and the allegations are primarily against the husband of the deceased (son of the applicant).

12. He submits that since the beginning of the marriage, the deceased was living separately on the first floor with her husband and the applicant used to reside on the ground floor.

13. He further submits that the FIR was initially registered under Sections 323/341/506/34 of the IPC and it was only upon the unfortunate death of the deceased that, Sections 304(B) and 302 of the IPC were added in the chargesheet.

14. He submits that from the bare perusal of the chargesheet, even if the allegations are *prima facie* taken to be correct, the applicant can be tried only under Section 498A of the IPC. He submits that the applicant had readily surrendered and cooperated with the investigation.

15. He submits that the charge sheet in the present case has already been filed and the applicant is in custody since 10.07.2023 and no purpose would be served by keeping the applicant in further incarceration.

16. The learned Additional Public Prosecutor for the State has opposed the grant of bail on the ground that the allegations are very heinous in nature and there are specific allegations against the applicant.

17. He submits that the postmortem report indicated that the deceased was beaten and was not provided any medical help at



the most needed time.

18. I have heard learned counsel for the parties.

19. Section 304B of 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 purpose 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.”

20. The presumption in law of a ‘dowry death’ is meant to act as a deterrent to the demand of dowry and to ensure that there is no victimization because of that. The basic ingredient to attract the provisions of Section 304B, IPC, is, firstly, that the death of the woman should have occurred under circumstances which are not normal. The conviction, by applying the provisions of Section 304B, IPC, is essentially based on the presumption that would necessarily mean that circumstances which are not normal or essentially the one where the reason of death is not ascertained.

21. The interpretation of Sections 304B and 498A IPC came up for consideration in ***Bajnath v. State of M.P.*** (2017 1 SCC 101). The relevant paras are extracted below:-



25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis "cruelty" as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

22. The law presumes that deaths which are not normal, if had happened within seven years of the date of marriage and the victim was subjected to cruelty in connection with demand of dowry made before her death would be termed as dowry death. The allegations of cruelty levelled against the applicant will be tested in trial and at this stage considering an application for bail only the parameters enshrined in that regard are to be considered.

23. In the present case there are no specific allegations against the applicant in regard to the demand of dowry soon before the death of the victim. It is true that general allegations have been



levelled of the victim being subjected to cruelty and physical assault by her husband and his family members, however, no specific allegation has been made against the applicant in regard to the cruelty in connection with any demand of dowry soon before the death of the victim.

24. It has specifically been alleged that the victim was subjected to physical assault by her husband soon before her death. It is alleged that the victim had made a phone call to her sister two days before her death complaining that her husband had beaten her and she was in lot of pain and was also vomiting. It is not alleged that the victim was physically assaulted by the applicant.

25. It was contended that the applicant was also responsible since he did not provide the timely medical help to the victim. The learned counsel for the applicant, however, pointed out that the applicant has been staying on a separate floor and was, therefore, not aware of the victim being physically assaulted by his son. The allegation and the defence in this regard would be tested during the course of the trial.

26. The object of jail is to secure the appearance 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. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time. The presence of the accused can be secured at the time of trial by putting appropriate conditions.

27. 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 out a case for grant of regular bail.



28. The applicant is, therefore, directed to be released on bail on furnishing a bail bond for a sum of ₹50,000/- with one surety of the like amount, subject to the satisfaction of learned Trial Court / Duty Metropolitan Magistrate on the following conditions:

- a. He shall under not leave the country without the permission of the learned Trial Court;
- b. He shall appear before the learned Trial Court on every date of hearing;
- c. He shall not, in any manner, try to contact any of the witnesses;
- d. He shall upon his release provide his mobile number to the investigating officer/SHO which shall be kept in working condition at all times.

29. 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.

30. It is clarified that the observations made in the present order are for the purpose of deciding the present bail application, and should not influence the outcome of the Trial. The said observations should not be taken as an expression of opinion on the merits of the case.

31. The present application is allowed in aforementioned terms.

AMIT MAHAJAN, J

MARCH 7, 2024

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