



2024:DHC:6699



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

Date of decision: 28th AUGUST, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 2908/2023 & CRL.M.A. 22821/2024**

MOHD FAIZAN

.....Petitioner

Through: Mr. Hirein Sharma, Mr. Vimal Tyagi,
Mr. Sudhanshu Tyagi, Mr. Bala Ji
Pathak and Mr. Tripurari Jha,
Advocates.

versus

STATE (N.C.T. OF DELHI)

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for
the State.
Mr. Dhruv Kumar, Ms. Kanika
Madan and Mr. Umang Varshney,
Advocates for the Complainant.
SI Suresh Kumar Meena, PS New
Usman Pur

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking Bail in FIR No.1087/2017, dated 24.10.2017, registered at Police Station Usmanpur for offences under Sections 498A/406/304B/34 IPC and Section 4 of the Dowry Prohibition Act, 1961.
2. The facts of the case reveals that on 23.10.2017, a PCR call was received at Police Station Usmanpur regarding a case of ingestion of insecticide at Jag Parvesh Chander Hospital and the same was registered vide DD No. 16B. Police reached the Hospital and found that one Rubina, wife of the Petitioner herein, was under treatment vide MLC No.11315/17.



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In the said MLC the doctor has opined history of ingestion of insecticide poison at home on 23.10.2017. It is stated that the said Rubina was referred to GTB Hospital where she was declared brought dead. On 23.10.2017, the father of the deceased gave a complaint to the concerned SDM and on the direction of SDM, the present FIR was registered.

3. In the complaint, the father of the deceased stated that the marriage of his daughter and the Petitioner herein was solemnized on 17.05.2014 as per Muslim rites and customs. It is stated that a good amount of dowry, including two lakhs cash, one motorcycle, jewellery, utensils, etc. was given. In the complaint it is stated that the Petitioner herein, his sister and his mother used to beat the deceased and used to pressurize her for bringing more money from her maternal house. The complaint further states that the uncle of the Petitioner used to instigate the Petitioner for killing Rubina. Various other allegations of torture and demand of dowry etc. have been made against the Petitioner and his family members in the complaint.

4. It is stated that after registration of the FIR, the Petitioner was arrested on 25.10.2017. Petitioner's father was arrested on 27.10.2017 and he has been granted bail vide Order dated 19.01.2018. It is stated that the Petitioner's sister, mother and uncle have been granted bail in the event of arrest by the Sessions Court. It is stated that charge-sheet has been filed and charges have been framed against the Petitioner, his father, his mother and his sister.

5. It is stated that the Petitioner filed four applications for grant of bail but all the applications have been rejected vide Orders dated 04.06.2018, 31.05.2019, 10.02.2020 & 05.06.2023. Material on record indicates that the Petitioner was released on interim bail during Covid-19 and he surrendered



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on 27.04.2023. The Petitioner has now approached this Court seeking bail.

6. It is stated by the learned Counsel for the Petitioner that the Petitioner has been falsely implicated in the present case. He states that there is only a single averment against the Petitioner in the Complaint filed by the father of the deceased and apart from that there is nothing to show that the deceased was subjected to cruelty by the Petitioner. He states that the Petitioner is in jail for four years and two months now, the charge-sheet has been filed and charges have been framed and most of the evidence is in custody of the Police and, therefore, there is no danger of the Petitioner tampering with evidence. He further states that the Petitioner has a clean history and he has not abused the interim bail granted to him vide Order dated 30.05.2020 and has surrendered on the expiry of the interim bail. He also states that the Petitioner has a child to look after and he has deep roots in the society and, therefore, it is unlikely that the Petitioner will abscond or flee from justice. He, therefore, states that the Petitioner be granted bail.

7. *Per contra*, learned APP for the State and the learned Counsel for the Complainant vehemently oppose the present Petition stating that the petitioner is involved in a very heinous crime and if convicted, he might be sentenced to undergo imprisonment for life. They state that the charges have been framed and the bail application of the Petitioner should only be considered after examination of the public witnesses.

8. Heard the Counsels for the parties and the learned APP for the State and perused the material on record.

9. The parameters to be considered for grant of bail have been succinctly laid down by the Apex Court and the Courts have to see the following while allowing or rejecting a bail application:



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- a. nature and gravity of the charge;
- b. severity of the punishment in case of conviction;
- c. reasonable apprehension of witness being influenced;
- d. prima facie or reasonable ground to believe that the accused had committed the offence;
- e. character, behaviour, means, position and standing of the accused;
- f. danger of justice being thwarted by grant of bail.

(Refer: Ram Govind Upadhyay vs. Sudarshan Singh and Others, (2002) 3 SCC 598 and Prasanta Kumar Sarkar vs. Ashis Chatterjee and Another, (2010) 14 SCC 496)

10. It is well settled that pre-trial incarceration of an under-trial is dependent upon the seriousness of the offence, past antecedents of the accused, capacity to tamper with the evidence and the propensity to repeat the offence. In the facts and circumstances of the present case, this Court is of the opinion that the petitioner is not in a position to tamper with the evidence or exert pressure on the Complainant and his family members. The Petitioner has not abused the interim bail granted to him and has surrendered on the expiry of the interim bail. Considering the young age of the Petitioner and also taking into account the fact that the petitioner is in custody since 25.10.2017, charges have been framed and all the material witnesses have been examined and also taking into account the fact that there is a child from the wedlock of the Petitioner and the deceased, who is residing with the parents of the Petitioner, this Court, is inclined to grant bail to the petitioner on the following conditions:



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- a) The petitioner shall give a security in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court;
- b) The Petitioner is directed to continue to reside at the address given in the Memo of Parties before this court and in case there is any change in the address of the Petitioner, the Petitioner is directed to intimate the same to the Investigating Officer.
- c) The Petitioner is directed not to leave the city of Delhi without prior permission of the concerned Court.
- d) The Petitioner is directed to report to the local police station once in every week, i.e. on every Wednesday at 10:30 AM and the Petitioner shall be released within half an hour after completing the formalities;
- e) The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times;
- f) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner;
- g) The Petitioner is directed not to contact the Complainant or any of his family members.
- h) The petitioner shall attend all the Court proceedings.
- i) In case it is established that the petitioner has tried to influence the witnesses or tamper with the evidence, the bail granted to the petitioner shall stand cancelled forthwith.



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11. The bail application is disposed of, along with all the pending application(s), if any.

12. Be it noted that this Court has not made any observations on the merits of the case.

SUBRAMONIUM PRASAD, J

AUGUST 28, 2024

Rahul