



2024:DHC:1222



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 12th February, 2024*+ **BAIL APPLN. 2955/2022**

HIMMAT SINGH Petitioner

Through: Mr. Mukesh Kalia, Mr.
Sunny Sharma, Advs.

versus

THE STATE (N.C.T OF DELHI) Respondent

Through: Mr. Utkarsh, APP for the
State with Insp. Ravi
Kumar, PS Alipur, Delhi.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J.**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in FIR No. 929/2021 dated 20.11.2021 under Sections 498A/304B/34 of the Indian Penal Code, 1860 registered at Police Station Alipur.

2. The FIR was registered on a complaint given by one Aver Singh, father of the deceased who alleged that his daughter, got married to the applicant on 29.04.2017, and is a victim of dowry death.

3. The complainant alleged that his daughter was subjected to cruelty by the applicant and his family members. It was alleged that the applicant and his family members demanded a sum of ₹5,00,000/- along with a car from the complainant.

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It is alleged that a period of four years had passed, since the

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marriage and, the applicant and his family members still used to threaten the complainant that the applicant will divorce his daughter. The complainant had also alleged that, he did not even speak to his daughter (deceased) for the past three and a half months, as the same was not allowed by the present applicant and one day when the complainant tried to reach out, the applicant picked the call and said that he doesn't wish to keep any ties with the complainant and his family.

5. The complainant also stated that about fifteen days prior to the incident he along with some close relatives visited to the house of the applicant where the mother of the applicant – co accused Beermati, alleged to have stated to the deceased, that your father has given nothing and go back with your father, after which the complainant consoled his daughter in order to save her marriage and left her at her matrimonial home.

6. It is further alleged that after the said day the complainant had no contact with the deceased, nor had any information about her until 19th November, 2021– the date of the alleged incident. It was alleged that deceased's sister received a call from the applicant in the morning of 19.11.2021 stating that he had beaten the deceased, and the same evening she received a call from the sister-in-law of the applicant stating that the deceased has been admitted in the hospital. While the complainant and family members were on the way to the hospital, the complainant received a call from Alipur Police Station stating that his daughter has expired because of poison consumption.

7. The investigation in the present case is complete and the



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chargesheet has already been filed. It is informed that the charges against the applicant have also been framed on the last date of hearing before the learned Trial Court.

8. The learned Counsel for the applicant submits that the applicant was arrested on 26.11.2021. He submits that the investigation, in the present case, is long over and no purpose would be served by keeping the applicant in further custody.

9. He submits that the trial in the present case is likely to take time since only charges have been framed till date and there is no hope that the trial will get over in the near future.

10. He submits that the deceased had a miscarriage in the month of November 2021, and since then she was not keeping good mental health and was deeply saddened and depressed and had often told the applicant that she had lost all hope in life and doesn't wish to live anymore.

11. He submits that as per the allegations as levelled in the FIR the complainant has stated that his daughter was given beating's whereas the post mortem report dated 20.11.2021 notes that there were no external injuries on the body of the deceased.

12. He submits that the co-accused persons (father and mother of present applicant) had also given a prior complaint dated 21.10.2019 at the police station Alipur due to ill-treatment and torture caused by the deceased and it was stated in the complaint that the complainants (mother and father of the applicant) have severed all their ties with the present applicant and the deceased and have started to reside separately. Both the mother and father of the applicant – co-accused person, were granted bail by this



court by separate orders both dated 17.05.2022.

13. He further submits that the applicant also has a four years old daughter who is presently living with his sister and the present situation is causing hardship upon the family. He submits that the applicant was also released on interim bail pursuant to order dated 25.09.2023, passed by this Court and has not misused the liberty.

14. The learned Additional Public Prosecutor for the state has opposed the grant of present bail application

15. He submits that during the course of investigation the statement of witnesses were recorded under Section 161 of Cr.P.C, wherein the witnesses have corroborated the allegations as stated by complainant.

16. He further submits that there are allegations for a demand of Rs.5,00,000/- and a car against the present applicant and his family members.

17. I have heard learned counsel for the parties.

18. 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.”

19. It is not denied no external injury is recorded in the post mortem report and *prima facie*, at this stage there is no material on record to allege that there was any demand of dowry, prior to the alleged incident. No material has been brought on record, at this stage, to show that the applicant was subjected to cruelty soon before her death, for the purposes of demand of dowry.

20. The fact that the call was made by the applicant to the relative of the complainant, stating the he had beaten the deceased being corroborated by the CDR showing that the call, in fact was made, at this stage, does not show that the call was made for the purpose as alleged and the same would be seen during the trial.

21. The allegations are made that the applicant and his family members demanded a sum of ₹5,00,000/- along with a car. However, no time has been mentioned and the demand, at this stage, appears to have been made much prior to the alleged incident.

22. 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



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where the reason of death is not ascertained.

23. 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 deceased stated to have consumed some poison.

24. 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 allegations 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.

25. In *Savita v. State of Delhi*: (2019) 10 SCC 29, the Hon'ble Supreme Court granted Bail to the accused charged for offences under Sections 498-A and 304 of the Indian Penal Code, 1860, considering that the accused had already been in jail for 27 months out of a total sentence of 10 years' rigorous imprisonment.

26. The applicant was arrested on 26.11.2021, the chargesheet has already been filed and the case is pending at the stage of prosecution evidence. The charges against the applicant would be tested at the time of trial. It is also not denied that the applicant has a four year old daughter to be taken care of.

27. At this stage, when the applicant has already spent more than 700 days in judicial custody, the investigation is already complete and the charge sheet has already been filed, there is no chance of the accused absconding or fleeing, if released on bail.

Moreover, the same can also be taken care of by putting

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appropriate conditions. No apprehension can be raised about the witnesses being influenced.

28. The object of Jail is to secure the appearance of the accused 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 specially 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.

29. 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.

30. The applicant is, therefore, directed to be released on bail on furnishing a bail bond for a sum of ₹50,000/- (rupees One Lakh only) with two sureties of the like amount to the satisfaction of learned Trial Court / Duty Metropolitan Magistrate on the following conditions:

- a. He shall under no circumstance 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 join and cooperate in case required for further investigation;
- d. He shall not, in any manner, try to contact any of the witnesses;
- e. He shall upon his release provide his mobile number



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to the investigating officer/SHO which shall be kept in working condition at all times.

31. 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.

32. 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.

33. The present application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

FEBRUARY 12, 2024
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