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

+ **BAIL APPLN. 2355/2024**

RAJA RAM

.....Applicant

Through: Mr. Pradeep Rana, Mr.
Inderpreet Singh, Mr.
Anshul Sharma & Mr.
Siddharth Soni,
Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Naresh Kumar
Chahar, APP for the State
alongwith Ms. Radhika
Yadav, Mr. Atharva
Kotwal & Ms. Sana Jain,
Advocates.
Inspector Arun Dagar
(P.S. Bhalswa Dairy).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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10.07.2024

CRL.M.A. 19826/2024 (exemption from filing certified copies of annexures)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed seeking pre-arrest bail in FIR No.456/2024 dated 07.06.2024, registered at Police Station Bhalswa Dairy, for offences under Sections 498A/304B/34 of the Indian Penal Code, 1860 ('IPC').
4. The present FIR was registered on a complaint made by

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the complainant, who is the mother of the deceased. During enquiry, the statements of the father and brother of the deceased were also recorded.

5. The brief facts of the case are that the deceased had married the son of the applicant in December, 2021. It is alleged the in-laws of the deceased, including the applicant (father-in-law of the deceased) had demanded dowry from the family of the deceased at the time of the marriage, pursuant to which, ₹10,00,000/- had been given in cash as dowry to the applicant along with other household items.

6. It is alleged that after five months of her marriage, the deceased told the complainant that her husband (the applicant's son) and his family members were demanding ₹5,00,000/- as they wanted to purchase a car. It is alleged that when the deceased had gone to her maternal home, she had disclosed to the complainant that the accused persons used to beat her for not giving ₹5,00,000/-.

7. It is alleged that the victim also made a WhatsApp video call on 28.05.2024 to the complainant asking her to arrange the amount of ₹5,00,000/- as she was being daily beaten and harassed by her husband and in-laws for dowry.

8. It is alleged that on 31.05.2024, the deceased had sent an audio recording through WhatsApp to her sister Nidhi wherein the applicant's wife (mother-in-law of the deceased) could be heard arguing and harassing the deceased. On the same day, in the evening, the applicant had called the father of the victim and informed about the death of the deceased.

9. The FIR was lodged on the suspicion that the accused persons were involved in the death of the victim.



10. The learned counsel for the applicant submits that the family members of the deceased reached the house of the applicant at about 9:30 PM on 31.05.2024, however, they made no complaint to any police authority until way later.

11. He submits that although the deceased expired on 31.05.2024, the FIR indicates that the information was received only on 07.06.2024. He submits that the allegation *qua* the demand of ₹5,00,000/- was levelled belatedly a week after the death of the victim.

12. He submits that no complaints had been made by the deceased or her maternal family prior to her death regarding the demand of dowry.

13. He submits that even if the allegations in the FIR are taken at the highest, no specific time or date has been mentioned as to when the demand of ₹5,00,000/- was made. He submits that in such circumstances, it cannot be said that the demand of dowry was soon before the death of the victim.

14. He submits that the applicant along with his wife was residing on the first floor of the house while the rest of the family including the deceased resided on the ground floor of the house.

15. He submits that the husband of the deceased has already been arrested in the present case. He submits that the applicant is a senior citizen and no purpose would be served by subjecting him to suffer incarceration.

16. He submits that the sister-in-law and brother-in-law of the victim have already been granted pre-arrest bail by the learned Trial Court *vide* order dated 21.06.2024 wherein it was noted that no specific allegations of demand of dowry or causing harassment to the deceased had been levelled against them.



17. He submits that the innocence of the applicant is evidenced from the fact that he had arranged a corpse storage refrigerator to preserve the body of the victim while awaiting the arrival of her family members.

18. The learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that specific allegations have been levelled against the applicant whereby he cannot claim parity with the co-accused persons who have been granted pre-arrest bail.

19. He submits that the accused persons had put the body of the victim inside a fridge instead of taking her to any hospital for treatment which shows their guilt.

20. He submits that the PCR call regarding the death of the victim was made by her friend who had informed that the victim had died an unnatural death. He submits that the accused persons made no attempt to intimate the police authority on their own.

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

22. The considerations governing the grant of anticipatory bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation has been carried out by the investigating agency.

23. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, advertent to its previous precedents, has discussed the parameters to be considered while considering pre-arrest bail applications, in the



case of **State of A.P. v. Birsa Krishna Kundu : (1997) 8 SCC 104**, has held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which



Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

24. It is the case of the prosecution that the victim has died under unnatural circumstances within three years of her marriage to the applicant's son. It is alleged that the accused persons harassed the deceased soon after marriage on the pretext of dowry demands resulting in her death.

25. The learned counsel for the applicant has argued that the present case is clearly one where the victim has committed suicide by hanging herself. He states that the victim had marks on her neck. It is pointed out by the learned APP that the viscera report is still awaited and the cause of death of the victim is yet to be discerned. It is to be kept in mind that the investigation is currently at a nascent stage.

26. It is pertinent to note that the deceased has admittedly died an unnatural death within seven years of her marriage in her matrimonial home. The same raises the statutory presumption under Section 113 of the Indian Evidence Act, 1872. The applicant is the father-in-law of the deceased who has been specifically named in the complaint. It is also relevant to note that the applicant did not deem it proper to inform about the death of the victim to the investigating authorities despite the unnatural circumstances of her death. The fact of unnatural death was informed to the Police by a friend of the deceased on a PCR call. It was informed that the deceased had marks on her neck.

27. The Hon'ble Apex Court in the case of ***Samunder Singh v. State of Rajasthan and Others : (1987) 1 SCC 466***, while dealing with a case of dowry death, observed that the Hon'ble



High Court ought not to have exercised the discretion to grant anticipatory bail disregarding the gravity of the matter. It was held as under:

“The widespread belief that dowry deaths are even now treated with some casualness at all levels seems to be well grounded. The High Court has granted anticipatory bail in such a matter. We are of the opinion that the High Court should not have exercised its jurisdiction to release the accused on anticipatory bail in disregard of the magnitude and seriousness of the matter. The matter regarding the unnatural death of the daughter-in-law at the house of her father-in-law was still under investigation and the appropriate course to adopt was to allow the concerned Magistrate to deal with the same on the basis of the material before the court at the point of time of their arrest in case they were arrested. It was neither prudent nor proper for the High Court to have granted anticipatory bail which order was very likely to occasion prejudice by its very nature and timing. We therefore consider it essential to sound a serious note of caution for future. The High Court is under no compulsion to exercise its jurisdiction to grant anticipatory bail in a matter of this nature...”

(emphasis supplied)

28. It is argued that there was no demand of dowry soon before the death of the victim. It is trite law that the spectrum of cruelty is varied and the phrase “soon before” cannot be held to mean “immediately before” the death of the victim [Ref. ***Gurmeet Singh v. State of Punjab* : (2021) 6 SCC 108**]. Whether there was a proximate and live link between the harassment for dowry and death of the victim cannot be determined at this stage when the investigation is in the early stages.

29. Even though the statement about the cruelty meted out to the deceased was given belatedly, however, the same cannot be held to be fatal to the case at this stage. It is possible that the bereaved family of the victim took some time to lodge the complaint due to the shock and grief over the death of the victim.



No reason has been mentioned as to why the family of the victim would try to falsely implicate the accused persons.

30. It cannot be held, at this stage, that the investigation is being carried out with the intention to injure or humiliate the applicants. The nature and the gravity of the allegations are serious. It is settled law that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [Ref. ***State v. Anil Sharma : (1997) 7 SCC 187***].

31. The investigating agency thus deserves a free hand to investigate the role of the applicant, if any, in the death of the victim.

32. The ground of parity with the co-accused persons who have already been granted pre-arrest bail is unmerited. While it is true that certain general allegations against all the family members have been made, however, it is relevant to note that the complainant has made serious and pointed allegations regarding incessant demands of dowry and harassment against the applicant and his wife who lived in the same house as the victim *albeit* on different floors. Moreover, the applicant is clearly the eldest in the family and the possibility of his having instigated the demand of dowry that led to the eventual death of the victim cannot be ruled out at this stage, especially, since the complainant has stated that the dowry articles at the time of the marriage had been given specifically to the applicant.

33. In view of the above, in the present circumstances, this Court is of the opinion that custodial interrogation of the applicants ought not to be denied to the investigating authority.

34. Considering the aforesaid discussion, this Court is of the



opinion that the applicant has made out a *prima facie* case for grant of pre-arrest bail.

35. The present application is accordingly dismissed.

36. It is clarified that any 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 and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

JULY 10, 2024

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