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

+ **BAIL APPLN. 3528/2023**

SURAJ

..... Petitioner

Through: Ms. Urvashi Bhatia, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Sudhir, P.S. Aman Vihar.
Ms. Tanya Agarwal, Advocate for
complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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09.05.2024

1. The present application under Section 439 read with Section 482 of the CrPC seeks regular bail in case FIR No. 300/2022 under Sections 498A/304B/34 IPC registered at Police Station Aman Vihar.
2. The aforesaid FIR was registered on the statement of the complainant, father of the deceased, wherein it was stated that marriage of his daughter ('deceased') and the applicant was solemnised on 21.05.2021. It is stated that after the marriage, the in-laws of his daughter were all right for a short period of time and but after celebrating Diwali at her maternal home, when his daughter returned to her matrimonial home, she called him after 10 to 15 days and informed him that her husband i.e., the present applicant is beating her for dowry and is demanding Rs. 1 lakh for purchasing a bike. It was stated that the complainant had given Rs. 5, 51,000/- in cash, one gold chain



(one *tola*) and one ring ($\frac{1}{2}$ *tola*). It is stated that he explained to his daughter and the present applicant that he is already under debt. It is further stated that his daughter told him that her mother-in-law, Malu Devi, is also troubling her for dowry and taunts her for not- getting the entire material and tells her that if the said material is not given then they would not keep her. It is alleged that on 08.03.2022, his daughter called him and told him that her sister-in-law, Sweety and her husband, Sidhnath are also troubling her and they are taunting that she belong to a destitute family and that she did not bring anything in the marriage and if she does not get dowry then they would expel her from matrimonial home. It is further alleged that all the four people had treated his daughter with cruelty. It was further alleged that on account of non-fulfilment of demand of dowry, his son-in-law i.e., the present applicant, his mother, his sister and brother-in-law have killed his daughter by administering her poison. It was further alleged that the information regarding his daughter having consumed poison was given by Sidhanth on 09.03.2022. On the basis of the aforesaid statement, the aforesaid FIR was registered, investigation was conducted. During the course of investigation, the present applicant was arrested and chargesheet was filed.

3. Learned counsel for the applicant submits that the deceased had attempted suicide on 08.03.2022 by consuming poison and when the applicant saw her lying in a unconscious state, he rushed to the hospital. It is further submitted that after initial check up and treatment, she passed away. Learned counsel for the applicant submits that the statements of the complainant/father, mother and sister of the deceased have been recorded before the learned Trial Court.



4. Learned counsel for the applicant submits that the complainant who was examined as PW-1 before the learned Trial Court has materially improved upon his statement on the basis of which the present FIR had been registered. It is submitted that the allegations made by the complainant in the aforesaid testimony is beyond the records of the case and that 32by giving such testimony, which from the record of the case, is false impacts upon the credibility of such a witness. It is submitted that as per MLC of the deceased there was no fresh external injury found and she was not fit to give her statement. But complainant, in his examination-in-chief, has alleged that on 09.03.2022 when he went alongwith his wife to the hospital, his daughter i.e., the deceased told them that she was treated with cruelty by the present applicant and his mother-in-law and brother-in-law. He further alleges that his daughter told them that his brother-in-law, Sidhnath caught hold of her hands and the applicant poured poison into the mouth of his daughter and that the mother-in-law i.e., Malu Devi caught hold of her legs. Similarly, it is pointed out that during investigation it has come on record that, the brother-in-law of the present applicant i.e., Sidhanth and his sister, Sweety on 07.03.2022 were at Sanjay Gandhi Hospital and on the same day, she gave birth to a child. It has also come on record that on the date of the incident, Sweety, sister of the applicant was admitted in the hospital. During investigation it was also revealed that the brother-in-law of the present applicant was there with his wife, Sweety at hospital on the date of the incident. On account of the same, Sweety and Sidhnath were kept in Column No.12. It is submitted that these facts, *prima facie*, establish that the complainant (PW-1) is not a truthful witness. It is submitted that on the basis of aforesaid findings in the chargesheet the allegation made by the



complainant in the FIR that he got a call from his daughter on 08.03.2022 stating that the sister-in-law, Sweety and her husband, Sidhnath were torturing her is false on the face of it. It is pointed out that the applicant has been in custody since 11.03.2022 and has undergone incarceration for approximately more than 2 years.

5. *Per contra*, learned APP for the State, assisted by learned counsel for the complainant, submits that allegations in the present case are serious in nature and presumption under Section 113B of the Indian Evidence Act would be applicable in the present case. As per the statement made by PW-1/complainant there was a demand of dowry soon before the date of death i.e., 08.03.2022, as told to him by the deceased. It is further submitted that any alleged improvements by the complainant in the testimony will be determined by the learned Trial Court after conclusion of evidence. It is further submitted that alleged improvements, if any, would not otherwise dilute the case of the prosecution *qua* the demand of dowry by the present applicant soon before date of incident.

6. Heard learned counsel for the parties and perused the record.

7. The present FIR was registered, as pointed out hereinabove, on the complaint of PW-1. In the said complaint, he makes a categorical allegation that his daughter had told him on 08.03.2022, that her sister-in-law, Sweety and her husband Sidhnath are troubling her and are taunting her for bringing insufficient dowry and also thereafter demanding dowry. This is stated to be the demand of dowry soon before the date of incident. As has been pointed hereinabove, in the chargesheet, it has been recorded by the Investigating Officer that aforesaid Sweety was already admitted in the hospital at Sanjay Gandhi Hospital and her husband Sidhnath was with her on the said date.



Similarly, the complainant examined as PW-1 in his examination-in-chief has introduced an alleged dying declaration by his deceased daughter at the hospital which was never the case of prosecution in the chargesheet. As per the record, it is evident that the deceased was not fit to make a statement. The veracity of statements made by PW-1 will be determined by the learned Trial Court after completion of trial. The aforesaid circumstances, as pointed out hereinabove, however, cannot be ignored for the purposes of consideration of present application for bail. The applicant has been in custody since 11.03.2022 and has undergone incarceration for approximately more than 2 years. It is a matter of record that the relevant witnesses i.e., parents of the deceased and her sister-in-law have already been examined.

8. In totality of the facts and circumstances, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.



- v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
9. The application is allowed and disposed of accordingly.
10. Pending applications, if any, also stand disposed of.
11. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present application.
12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
13. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 9, 2024/nk

Click here to check corrigendum, if any