



2024: DHC: 2654



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.04.2024

+ **BAIL APPLN. 3680/2023**

LOKESH SHARMA @ SONU

..... Applicant

versus

THE STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Sudarshan Rajan, Mr. H. Bajaj &
Mr. J.S. Kalra, Advs.

For the Respondent : Mr. Hitesh Vali, APP for the State with SI
Manoj Kr., PS Mundka.
Mr. Hussain Ali, Adv. for complainant,
(through VC).

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 (**CrPC**) seeking grant of pre-arrest bail in FIR No. 701/2023 dated 29.09.2023, registered at Police Station Mundka, for offences under Sections 498A/304B/34 of the Indian Penal Code, 1860 (**IPC**).

2. Brief facts leading to the present application are as under :

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2.1 On 21.09.2023, a PCR call was received at Police Station Mundka, which was registered *vide* DD No.88A in respect of the suicide attempt by the daughter-in-law (deceased) of the applicant by hanging herself to the ceiling fan. It is alleged by the complainant/brother of the deceased that the co-accused namely, Liladhar and the deceased got married on 11.11.2022. It is alleged that the deceased was subjected to harassment for non-fulfilment of demands for dowry.

2.2 On 19.09.2023, the deceased had called her sister and informed that she was being beaten and the applicant allegedly pushed and abused her. The complainant thereafter, reached at the deceased's matrimonial home and brought back the deceased to the parental house. The deceased attempted to commit suicide while she was pregnant for four months, in her parental home on 21.09.2023 by hanging herself to the ceiling fan in her bedroom. Thereafter, she was taken to the hospital where she later died on 29.09.2023.

2.3 Since the deceased had been married for only about ten months, the SDM was informed.

2.4 Thereafter, the present FIR was registered on the complaint made by the brother of the deceased.

2.5 The applicant, on the apprehension of arrest moved an application seeking pre-arrest bail before the learned Trial Court which was dismissed by order dated 14.10.2023 passed by the



learned Additional Sessions Judge, Tis Hazari Courts, Delhi.

Hence, the present application.

3. The learned counsel for the applicant submitted that the applicant is not related to the husband of the deceased or his family members. Thus, he could not have been implicated as an accused for the commission of the offences under Section 498A/304B of the IPC.

4. He submitted that the applicant was only the landlord of the premises where the deceased was staying along with her husband and mother-in-law. The family members of the deceased were well aware about the fact that the father-in-law of the deceased had expired and same can be seen from the marriage card published from their side.

5. He submitted that the allegations against the applicant are false and concocted and it is an admitted fact that the applicant is a married man and has a daughter aged 11 years. The applicant has a separate residence and has no connection with the family of in-laws of the deceased.

6. *Per Contra*, the learned Additional Public Prosecutor ('**APP**') for the State submitted that the allegations levelled against the applicant are serious in nature and that there are also instances wherein the applicant harassed the deceased and her family members for dowry. He submitted that the applicant was having an illicit relationship with the mother-in-law of the deceased and had subsequently, married her which can be implied from the alleged video wherein the applicant can be seen giving toe ring to the mother-in-law of the deceased.



7. He further submitted that the deceased suffered harassment at the hands of the applicant and his family members and was compelled to commit suicide because of their behaviour. He submitted that by virtue of Section 113B of the Indian Evidence Act, 1872, there is a presumption against the applicant that he caused death owing to the demand for dowry.

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

9. Before advertng to the merits of the case, it is relevant to discuss the relevant provisions of law. Section 498A of the IPC is reproduced as under:

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—

(a) any willful 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) of the woman; or

(b) 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.”

10. The Hon’ble Apex Court in the case of ***Bhaskar Lal Sharma and Anr v. Monica*** : (2009) 10 SCC 604, enumerated the essential



ingredients to attract provisions of Section 498A, which are reproduced as under:

"Thus, the essential ingredients of the aforementioned provisions are:

- 1. A woman must be married.*
- 2. She must be subjected to cruelty.*
- 3. Cruelty must be of the nature of:*
 - (i) any willful conduct as was likely to drive such woman:*
 - a. to commit suicide; b. cause grave injury or danger to her life, limb, either mental or physical;*
 - (ii) harassment of such woman, (1) with a view to coerce her to meet unlawful demand for property or valuable security,*
 - (2) or on account of failure of such woman or by any of her relation to meet the unlawful demand,*
 - (iii) woman was subjected to such cruelty by: (1) husband of that woman, or (2) any relative of the husband.*

For constitution an offence under Section 498A of the IPC, therefore, the ingredients thereof must be held to be existing.

For proving the offence under Section 498A of the IPC, the complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any willful conduct on the part of the accused 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."

11. Section 304B of the IPC, which defines the offence of dowry death, 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.”

12. The Hon’ble Apex Court, in the case of ***Biswajit Halder @ Babu Halder and Ors v. State of W.B. : (2008) 1 SCC 202***, discussed the essentials ingredients to attract provisions of Section 304B of the IPC as under :

"The basic ingredients to attract the provisions of Section 304B are as follows: -

- (1) The death of a woman should be caused by burns or fatal injury or otherwise than under normal circumstances;*
- (2) Such death should have occurred within seven years of her marriage;*
- (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband; and (4) Such cruelty or harassment should be for or in connection with demand for dowry.*

Alongside insertion of Section 304B in IPC, legislature also introduced Section 113B of Evidence Act, which lays down when the question as to whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation appended to Section 113 B lays down that "for the purpose of this section 'dowry death' shall have the same meaning as in Section 304 B of IPC".

If Section 304 B IPC is read together with Section 113 B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in an unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment upon



such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under "dowry death" and there shall be a presumption against the husband and the relatives."

13. The applicant is sought to be prosecuted for offences under Sections 498A and 304B of the IPC on the allegation of being the father of the husband of the deceased.

14. As noted above, Sections 498A and 304B of the IPC are attracted when the victim is subjected to cruelty by the accused persons, being, husband of the victim or any relative of the husband.

15. The statement of the applicant has been recorded by the State. It is stated that the Mother-in-Law (Ms. Tara Devi) of the deceased is working as a maid in his house from the last eleven years. It is further stated that the applicant arranged a flat where Ms. Tara Rani had been staying with two sons, Liladhar (husband of the deceased) and Dev. The flat was given on a rent of ₹3,000/-. The applicant has further stated that he had gone to the house of the deceased on a couple of occasions and had also spent ₹20,000/- to ₹30,000/- in the marriage.

16. It is not denied that the applicant is not staying in the same house where the deceased was residing with her husband. There is no evidence, at this stage, to show that the applicant is the relative of the husband of the deceased and can be prosecuted for offences under Sections 498A and 304B of the IPC.

17. As pointed out, in the marriage card of the deceased with the accused, Liladhar, the applicant has not been shown as the father of the husband of the deceased.



18. It is alleged that the applicant had given a toe ring to the Mother-in-Law of the deceased and was actively involved in the marriage preparations of the deceased. The same, however, at this stage, do not, in any manner, show that the applicant is a relative of the husband of the deceased. The relative, in terms of Section 304B of the IPC, means a person who is related by blood, marriage or adoption.

19. The applicant, *prima facie*, does not appear to be related to the husband of the deceased by blood, marriage or adoption, therefore, he could not be considered at this stage as a relative of the husband. The Hon'ble Supreme Court in the case of ***State of Punjab v. Gurmit Singh* : 2014 9 SCC 632** observed as under:

“11. It is a well-known rule of construction that when the legislature uses same words in different parts of the statute, the presumption is that those words have been used in the same sense, unless displaced by the context. We do not find anything in context to deviate from the general rule of interpretation. Hence, we have no manner of doubt that the word “relative of the husband” in Section 304-B IPC would mean such persons, who are related by blood, marriage or adoption. When we apply this principle the respondent herein is not related to the husband of the deceased either by blood or marriage or adoption. Hence, in our opinion, the High Court did not err in passing the impugned order [Gurmit Singh v. State of Punjab, (2006) 1 RCR (Cri) 562 (P&H)] . We hasten to add that a person, not a relative of the husband, may not be prosecuted for the offence under Section 304-B IPC but this does not mean that such a person cannot be prosecuted for any other offence viz. Section 306 IPC, in case the allegations constitute offence other than Section 304-B IPC.”



20. In the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694***, the Hon'ble Supreme Court dealt with the issue of pre-arrest bail, and the balance that needs to be maintained while granting the same to an accused and further laid down the factors that must be taken into consideration while granting pre-arrest bail and held as under:

“...112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Penal Code, 1860, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair*



and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail..."*

21. It is not in doubt that order for grant of bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined investigation, cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

22. The purpose of custodial interrogation is to aid the investigation and is not punitive. From the perusal of the Status Report, it appears that the investigation is complete to a large extent and does not require the custodial interrogation of the applicant for the purpose of Investigating Agency to complete the remaining investigation, if any.

23. In view of the above, this Court is of the opinion that the custodial interrogation of the applicant is not required. It is directed that in the event of arrest, the applicant be released on bail on furnishing a personal bond of ₹25,000/- with two sureties of the like amount subject to the satisfaction of the concerned SHO, on the



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following conditions:

- a) The applicant shall join and cooperate with the investigation as and when directed by the IO;
- b) The applicant will not leave the boundaries of the National Capital Region without informing the IO/ SHO concerned;
- c) The applicant shall not contact the complainant / witnesses or tamper with the evidence in any manner;
- d) The applicant shall give their mobile numbers to the concerned IO/SHO and shall keep their mobile phones switched on at all times.

24. 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 application seeking cancellation of bail.

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

26. The bail application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

APRIL 03, 2024
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