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

+ **CRL.A. 943/2023**

DEEPAK MEHTA IN JC

.....Appellant

Through: Ms.Naiem Jahan Heena, Advocate
versus

THE STATE

.....Respondent

Through: Mr.Aman Usman, APP with Insp.
Vikas Malik, P.S. Mansarover Park.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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03.07.2024

CRL.M.A. 30903/2023 & CRL.M.(BAIL) 1587/2023

1. At the outset, it has been brought to the notice of this Court that in order dated 31.01.2024 exemption application has been wrongly typed as CRL.M.A. 30903/2023 instead of CRL.M.A. 30902/2023. The typographical error accordingly stands corrected and CRL.M.A. 30902/2023 stands disposed of instead of CRL.M.A. 30903/2023.
2. An application under Section 389 of Cr.P.C. has been preferred on behalf of the appellant for bail during pendency of the appeal.
3. Appellant has been convicted vide judgment dated 03.07.2023 and sentenced vide order dated 14.09.2023 to undergo Simple Imprisonment (SI) for seven years and fine of Rs.50,000/- for offence punishable under Section 304B IPC; and SI for one year and fine of Rs.5,000/- for offence punishable under Section 498A (in default of payment of fine to undergo SI for 03 months) with benefit of Section 428 Cr.P.C.
4. In brief, as per case of the prosecution, deceased (Divya) was married with the appellant (Deepak Mehta) on 18.01.2012 and committed

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suicide by hanging on 06.02.2012, within a period of 18 days of the marriage. Present FIR was lodged on statement of mother of the deceased, and allegations of demand of double door refrigerator, fully automatic washing machine, etc. were alleged against the appellant.

5. Learned counsel for the appellant submits that there are improvements, omissions and contradictions in the testimony of the father of deceased (PW3) and mother of deceased (PW6), which cast doubt on the prosecution version. She further submits that father and mother of the appellant have since expired and there is none to take care of grandmother of the appellant, who is aged about 85 years.

6. On the other hand, learned APP for the State vehemently opposes the application and submits that the allegations have been duly supported by the prosecution witnesses i.e. mother and father of the deceased. Further, presumption under Section 113B is to be drawn against the appellant.

7. I have given considered though to the contentions raised.

As per Nominal Roll, appellant is in custody for period of 02 years 07 months 01 day as on 26.03.2024 and has earned remission of 02 months and 20 days. He has further remained in custody for more than three months thereafter. The disposal of appeal is likely to take some time.

On merits, it needs to be considered if there is clinching evidence on record to prove that victim was subjected to cruelty or harassment, in connection with any demand for dowry, prior to her death in order to bring the guilt against the appellant under Section 304B IPC.

The testimony of mother of the deceased (PW6) reflects that the witness made substantive improvements in her statement and was duly confronted with respect to allegations regarding demand of money for



making payment to *kinner* (eunuch) of Rs.2,00,000/- by the appellant and demand for the purpose of giving the articles in the marriage of sister of appellant. Also, it cannot be ignored that appellant and complainant belong to a humble background and the income of father of the deceased was admitted to be only about Rs.15,000/- per month while the appellant was earning about Rs.30,000/- per month as a property dealer. In view of the contradictions brought out in the statements of the material witnesses, this court is of the considered opinion that the case is fit for suspension of sentence and releasing the appellant on bail during pendency of the appeal.

Accordingly, sentence of appellant is suspended during pendency of appeal and he is admitted to bail subject to furnishing of personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like amount to the satisfaction of the learned Trial Court. Appellant is also exempted from depositing fine amount for the purpose of suspension of sentence till disposal of the appeal.

Applications are accordingly disposed of.

A copy of this order be forwarded to the learned Trial Court and Superintendent Jail for information and compliance.

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Appeal be listed in due course.

ANOOP KUMAR MENDIRATTA, J

JULY 3, 2024/v