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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 4282/2023 & CRL.M.A. 34909/2023

IKLASH

..... Applicant

Through: Mr. Shrey Sharawat, Mr.
Nitesh Ojha, Mr. Abhineet
Singh, Mr. Sahil Yadav,
Ms. Ishita Misra & Mr.
Himanshu Sihag, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Pradeep Gahalot, APP
for the State along with
Adv. Namrata Singh
SI Sachin Panwar PS-
Fatehpur Beri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

21.03.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in FIR No.199/2023 dated 08.05.2023 under Sections 498A/304B/34 of the Indian Penal Code, 1860 registered at Police Station Fatehpur Beri

2. The FIR was registered at the instance of the brother of the deceased, against the present applicant, and his family members, alleging that the deceased was subjected to harassment and cruelty by her husband and his family members.

3. On 07.05.2023, an information was received vide DD No. 32A with respect to a suicide being committed by the sister of the Complainant by hanging herself from an iron pipe attached to a roof. It is stated that the family members had untied the rope and laid the body on a cot.

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4. It is stated that the marriage between the deceased and the applicant was solemnized on 27.11.2022. It is alleged that three days before the wedding, the applicant, along with his uncles namely, Javed, Irsad, and his mother, demanded a car. It is alleged that before the marriage a compromise was entered into pursuant to which apart from dowry articles given in the wedding ceremony, additionally, a sum of Rs 10 lakhs was handed over in cash at the time of *Vidayi*. It is alleged that from the next day onwards the applicant and his family members started demanding a Creta Car and also told the deceased to not comeback without the said Car.

5. It is also alleged that the applicant was not coming to take the deceased from her paternal home and on 07.05.2023 the applicant was due to pick up the deceased at around 10:30 AM, but he didn't arrive and this lead to deceased becoming upset and hanged herself.

6. The complainant alleged that the deceased took her life due to the relentless demands for dowry and the harassment inflicted upon her by the applicant and his family members. The applicant is in judicial custody since 26.05.2023.

7. The learned Counsel for the applicant submits that after the marriage the deceased only spent 5 to 6 days at her matrimonial home and thereafter went to her parental house.

8. He submits that the family of the applicant had tried on various occasions to get the deceased back to her matrimonial home. He submits that it was the complainant who told the applicant that he will send the deceased back in two months, however, later on 05.05.2023 with the intervention of the mediator to the marriage, the mother and complainant agreed to send the deceased on 07.05.2023.

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9. He submits that there is no previous complaint either by the deceased or by her family members in respect of any dowry demand.

10. He submits that on 07.05.2023, even before the applicant could reach the house of his in-laws, at around 11:30 a.m., the deceased committed suicide by hanging at her paternal house on the same day. The MLC bearing no. 3050/ 2023 of the deceased was prepared, in which it has been recorded that “hesitation cuts marks on left forearm”. He submits that the investigating officer was also advised by the doctor concerned to seek further evaluation of the said marks, however the same was not done.

11. He submits that the investigation in present case is complete and the chargesheet has already been filed.

12. He submits that from a bare perusal of the FIR, Chargesheet, statements of the witnesses and the documents relied upon by the prosecution, no offence under Section 304B/ 498A/ 406/ 34 IPC is made out against the Applicant. He submits that only the applicant has been kept in Column 11 of the Chargesheet and his family members in Column 12 for want of specific allegations against them.

13. He submits that the deceased was engaged in the pre-marital relationship and no investigation *qua* the same was carried by the investigating officer.

14. He further submits that from the perusal of the what's app chats between the applicant and complainant, which are a part of the chargesheet, no demand of any car could be ascertained.

15. The learned Additional Public Prosecutor for the State has opposed the grant of present bail application. He submits that complainant has alleged that the just three days prior to the



marriage the applicant and his family members had demanded a Car in marriage from the family of the deceased.

16. He submits that the complainant had provided a audio recording with regards to the alleged demand of the car, between the Asif Ali (brother of the deceased) and Rafeeq / Mediator to the marriage.

17. I have heard learned counsel for the parties.

18. It is admitted that the present applicant is the sole accused in column 11 of the chargesheet and rest all the accused are put in column 12 of the chargesheet.

19. It is also not in dispute that the deceased had stayed with the applicant only for a brief period of 5-6 days and the alleged incident took place in her paternal home. The applicant was arrested after he had surrendered before the investigating officer after the dismissal of his anticipatory bail application.

20. It is also stated in the status report that the allegation with respect to the Rs.10 lakhs being given at the time of *vidayi* is controverted since Javed one of the uncles of the applicant had provided a video which shows that the family of the deceased gave a sum of rupees two lakhs and eleven thousand only in cash at that time.

21. Section 304 of the 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 purposes 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."

22. The basic ingredient to attract presumption in terms of Section 304B of the IPC is that the death should have occurred under circumstances which are not normal within seven years of her marriage and the victim was subjected to cruelty or harassment by her husband or any of her husband's relative in connection with any demand for dowry soon before the death.

23. It is not a case of the prosecution that the applicant or his family members have been alternatively charged for offences under Section 302 or 306 of the IPC. In fact, the other co-accused persons are stated to have been kept in column 12 of the chargesheet. It is also not denied that deceased was not staying with the applicant at the relevant time. The death occurred at her parental home.

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 will be tested in trial and at this stage considering the Application for Bail only the parameters enshrined in that regard are to be considered.

25. The applicant is in custody since 26.05.2023, the chargesheet has already been filed. The trial is at the stage of Prosecution evidence and is likely to take considerable period of time.



26. The object of judicial custody is to secure the presence of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. Delay in the commencement and conclusion of the trial is a factor to be taken into account and the accused cannot be kept in custody for an indefinite period if the trial is not likely to be concluded within a reasonable time. The presence of the accused can be secured at the time of trial by putting appropriate conditions.

27. 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 the grant of regular bail.

28. In view of the above, the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹25,000/- with one surety of the like amount to the satisfaction of learned Trial Court / Duty MM / Link MM on the following conditions:

- a. The applicant shall not leave the country without prior permission of the learned Trial Court;
- b. The applicant shall cooperate in the trial and appear before the learned Trial Court as and when directed;
- c. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case;
- d. The applicant shall not, in any manner, try to contact any of the witnesses;
- e. The applicant shall provide his mobile number to the concerned Investigating Officer /SHO at the time of his release and the mobile shall be kept in working condition at all times;



f. The applicant shall in case of change of residential address and/or mobile number, intimate the concerned Investigating Officer regarding the same.

29. 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.

30. It is also made clear that the observations made in the present case are only for the purpose of considering the 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.

31. The present application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

MARCH 21, 2024
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