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

+ **BAIL APPLN. 3417/2024**

HARI KISHAN@ BUNTYApplicant
Through: Mr. Ranjan Sharma,
Advocate (Through V.C.).

versus

THE STATE N C T OF DELHIRespondent
Through: Mr. Ajay Vikram Singh,
APP for the State.
SI Ajay Kumar (P.S.
Aman Vihar).
Mr. Arjun Kumar Jha,
Advocate (Through V.C.)
for Complainant/Kavita
Devi).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **23.09.2024**

1. The present application is filed seeking bail in FIR No. 274/2024 dated 28.04.2024, registered at Police Station Aman Vihar, for offences under Sections 498A/306/34 of the Indian Penal Code, 1860 ('IPC'). The chargesheet in the present case was filed under Sections 498A/304B/34 of the IPC.

2. The FIR was registered on a complaint given by Ms. Kavita Devi, that is, the mother of the victim Bipasha. It is alleged that the victim had married the applicant on 16.12.2023. It is alleged that on 27.04.2024, the victim was found to have hanged herself in her matrimonial home. On being taken to the hospital, the victim was declared as brought dead. The complaint was given by the mother of the victim who stated that door of the

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floor in which the victim was found hanging was found locked from inside.

3. It is alleged that the applicant and his family used to make dowry demands from the victim. It is also alleged that the victim was also tortured by her in-laws on many occasions.

4. The learned counsel for the applicant submits that there are contradictions in the statement given by the witnesses.

5. The charges are yet to be framed in the present case. The FIR was registered on a serious allegation that the victim was tortured. Specific dates and incidents have been alleged by the complainant and other family members of the victim.

6. I have heard the learned counsel for the parties and have perused the material on record.

7. The Hon'ble Supreme Court in catena of judgments has consistently emphasised the factors to be taken into account when considering bail application, which include: (i) the nature or gravity of the offense; (ii) the character of the evidence and circumstances unique to the accused; (iii) the likelihood of the accused evading justice; (iv) the potential impact of the release on prosecution witnesses and its societal repercussions; and (v) the probability of the accused engaging in tampering.

8. In the present case, the charge sheet has been filed under Sections 498A/304B/34 of the IPC. The mother of the deceased in her statement under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC') stated that post the marriage of the deceased, the deceased was abused and hit by the applicant and her in laws. Specific allegations in relation to the demand of dowry on specific dates have also been made. She has further stated that the deceased was tortured and beaten at the hands of the applicant and her in-laws.



9. Section 304B 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 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.”

10. One of the basic ingredients to attract the provisions of Section 304B of the IPC is that the death of the woman should have occurred under circumstances which are not normal. The Hon’ble Apex Court in ***Maya Devi and Another vs. State of Haryana : (2015) 17 SCC 405*** when dealing with the essentials of dowry death under Section 304B of the IPC observed as under:

“29. Section 304-B IPC does not categorise death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring “otherwise than under normal circumstances” can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of Section 304-B IPC are fulfilled, any death (homicidal or suicidal or accidental) whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a “dowry death” and the woman's husband or his relative “shall be deemed to have caused her death”. The section clearly



specifies what constitutes the offence of dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death.”

(emphasis supplied)

11. In line with the dictum of the Hon’ble Apex Court in *Maya Devi (supra)*, for the purpose of Section 304B of the IPC, unnatural death includes suicide. Consequently, once the essentials of Section 304B of the IPC are satisfied, and it is shown that the wife dies an unnatural death, within 7 years of marriage, and it is proved that right before her death, she was subjected to cruelty/harassment in relation to any demand for dowry, the same would be termed as dowry death. It is pertinent to mention that once the essentials of Section 304B of the IPC are made out, the law raises a statutory presumption of dowry death under Section 113B of the Indian Evidence Act, 1872. The presumption in law regarding ‘dowry death’ is meant to act as a deterrent to the demand of dowry.

12. Being conscious of the fact that individual liberty holds immense significance, it is incumbent upon the Courts to examine and evaluate, *albeit* briefly, factors such as the *prima facie* case, the severity of the crime, and the accused’s likelihood to tamper with evidence, among other considerations.

13. It is not disputed that the victim and the applicant only got married in December, 2023. 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 113B of the Indian Evidence Act, 1872.

14. It is pointed out that the charges are yet to be framed in the present case. However, from a perusal of the chargesheet, and the material on record, it is apparent that specific allegations in
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relation to demand for dowry and torture have been made against the applicant and his family members.

15. The applicant has been alleged to have committed offence under Section 304B of the IPC for which the maximum punishment is imprisonment for life. The present case is one wherein a young woman has lost her life within four months of her marriage. While the strength of the allegations levelled against the applicant would be tested during the course of trial, yet at this stage, it does not seem plausible why a mother who has lost her daughter would level allegations to falsely implicate the applicant.

16. Accordingly, taking into account the submissions made by the learned counsel for the parties, and material available on record, this Court is of the considered opinion that *prima facie*, there are serious allegations against the applicant which at this stage cannot be said to be frivolous.

17. Considering the facts and circumstances of this case, this court is not inclined to grant bail to the applicant at this juncture.

18. It is 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.

19. The application is therefore dismissed.

AMIT MAHAJAN, J

SEPTEMBER 23, 2024/ 'Aman'