



\$~8

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

+ **BAIL APPLN. 4029/2024**

ABDUL JABBAR

.....Petitioner

Through: Mr. Hirein Sharma, Mr. Vimal Tyagi,
Mr. Sudhanshu Tyagi, Mr. Akshay
Rathi and Mr. Balaji Pathak, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Digam Singh Dagar, APP for
State with Insp. Shiv Karan PS Nabi
Karim.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

05.12.2024

%

1. This petition has been filed seeking regular bail in FIR No. 624/2023 registered at PS Nabi Karim under Sections 304B/498A/201/34 of the Indian Penal Code, 1860 (“**IPC**”). Petitioner was arrested on 28th December, 2023. Alternative charge of Section 302 IPC was added subsequently by the charge-sheet.
2. The case of the prosecution was triggered by a PCR call received on 27th December, 2023 at 11:16 AM, that a lady had committed suicide and family members had buried the body. On inquiry, it transpired that the deceased (Shahana Parveen), 21 years of age had committed suicide at about 08:00 PM on 25th December, 2023. Mohd. Shahnawaj (the husband of deceased) and the petitioner (father-in-law of deceased) were called.
3. The husband stated that on 25th December, 2023 he was on duty at



Ambadeep Building, KG Marg, New Delhi and received a telephone call from his wife. He went back home and found the door closed. His brother and tenant Pushpa said that his wife had closed the door of the room. With the help of the neighbours, he opened the door after breaking a side wall and found his wife hanging with a ceiling fan with the help of *chunni*. The body was taken down from the noose and thereafter, removed the body and buried it in the graveyard, without giving any information to the police. Since the incident came in the knowledge of the police on 27th December, 2023 on information by the brother of the deceased, the FIR was registered subsequently.

4. Post-mortem was conducted which opined that, “*Cause of death was asphyxia as result of ante-mortem compression of neck structures by ligature.*” Subsequent statements of the family of the deceased recorded under Section 161 Cr.P.C. recorded that there was periodical harassment and cruelty meted out on the deceased by the husband and the father-in-law. After investigation, charge-sheet was filed.

5. The charges have been framed and the trial is to commence. The prosecution evidence is fixed for 17th December, 2024. While the husband of the deceased is in custody, the petitioner/father-in-law seeks regular bail.

6. It is contended by the counsel for the petitioner, that a perusal of the FIR and the statements would show that there is no specific allegation of cruelty meted out by the father-in-law and no specific date or incident has been narrated. Further, there was never any complainant previously made by the complainant regarding cruelty meted out to the daughter. He relies upon the decisions of this Court in *Teekam Singh v. State of NCT of Delhi* 2023:DHC:686, BAIL Application No.2595/2024 titled Ram Naresh v.



State, decision on 13th September, 2024 and **Ram Ashre v. State**, 2022:DHC:5852 where bail had been granted by this Court on the basis that specific allegations were not made against the applicant.

7. The APP for the State contends that the statement recorded by the sister of the deceased noted that two days prior to the incident, she was subjected to cruelty by the husband, which was corroborated by the CDR analysis of the deceased.

8. In **Savita v State of Delhi** (2019) 10 SCC 29, the Supreme Court granted bail to the accused charged for offences under Sections 498-A & 304 of IPC considering that the accused had already been in jail for 27 months out of a total sentence of 10 years rigorous imprisonment.

9. In **Ram Ashre v. State** 2022:DHC:5852 the applicant, who was the father-in-law of the deceased, was granted bail on the grounds that whether the applicant had any role to play in the commission of offence would be tested at the time of trial. The relevant paragraphs are extracted as under:

“6. It is clear from the perusal of record that the only allegation made against the present applicant by the father of the deceased, in his statement to the police, is that husband of the deceased and his family members, namely, his father, mother, brother, and sister, committed cruelty on the deceased and made demands for dowry. No specific allegation has been made against the applicant. The case of the prosecution is based on the statements made by the family and friend of the deceased, namely, Anisha, who had given certain details about the phone call being made by the deceased before her death. The said statement is also corroborated by the CDR. It is, however, significant to note that the prime witness, Anisha, in her statement had specifically mentioned that the deceased had only alleged cruelty against her husband and mother-in-law. Whether the applicant had any role to play in the commission of offence would be tested at the time



of trial. At this stage, however, it cannot be presumed that he is guilty of the offence.

...

8. *Specific allegations of demand of dowry or committing cruelty in relation to the demand of dowry have not been made on the deceased against the present applicant.*

9. 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."

(emphasis added)

10. Regards bai, the Supreme Court noted the observations made by Krishna Iyer, J., in ***Gudikanti Narasimhulu v. Public Prosecutor*** (1978) 1 SCC 240, as under:

"1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law. The last four words of Article 21 are the life of that human right."

(emphasis added)

11. The Supreme Court has made note of their observations in ***Sanjay Chandra v. CBI*** (2012) 1 SCC 40, as under:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor



preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

(emphasis added)

12. The Supreme Court in **Satender Kumar Antil v. CBI** (2022) 10 SCC 51, observed as follows:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”

(emphasis added)

13. This aspect was also recently reiterated by the Supreme Court in **Javed Gulam Nabi Shaikh v State of Maharashtra & Anr.** 2024 SCC Online SC 1693 in decision dated 3rd July 2024, where the Supreme Court has usefully traversed the principles of law relating to bail, extracted as under:

“9. Over a period of time, the trial courts and the High Courts



have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:

“What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:

“I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.”

11. The same principle has been reiterated by this Court in Gurbaksh Singh Sibba v. State of Punjab reported in (1980) 2 SCC 565 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment.

...

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

(emphasis supplied)

14. Considering that there are no specific allegations of cruelty against the



petitioner, the petitioner has been in custody for about 11 months, has no previous involvement, is aged 49 years and that the trial is yet to commence, the Court deems it fit to grant bail to the petitioner.

15. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner will mark presence physically before the concerned I.O. every first Tuesday of every month at 4 p.m. and will be not kept waiting for more than an hour.



vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

16. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

18. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

19. Order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 5, 2024/MK/na