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

+ **BAIL APPLN. 2282/2024**

MANISH MALPORIYA

.....Petitioner

Through: Mr. Herein Sharma, Mr. Vimal Tyagi,
Mr. Balaji Pathak, Mr. Sudhanshu
Tyagi and Mr. Tripurari Jha,
Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
Insp. R.N. Pathak, Main IO and Insp.
Vikas, P.S. Prasad Nagar.
Mr. Vipin Shankar, Advocate for
complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

23.04.2025

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1. This hearing has been done through hybrid mode.
2. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR no. 261/2022 under Sections 304B/498A/34 of the IPC, registered at P.S. Prasad Nagar.
3. The case of the prosecution as per the status report dated 07.01.2025, authored by SHO, P.S. Prasad Nagar, is as under:

“1.) Most respectfully it is submitted that on 25.05.22 at about 11:00 AM, information vide DD No. 45A from Ganga Ram Hospital was received stating that "Sarika W/o Manish Rio 11/2 Amrit Kaur Puri, Karol Bagh Delhi, GHAR PAR FAANSI LAGANE SE Brought Dead HAI" The DD Entry was marked to ASI Ishwar Singh for necessary



action. ASI Ishwar Singh reached the hospital and got the dead body preserved in the mortuary at MAMC Hospital. Further, he got the scene of crime inspected from Mobile Crime Team and seized the SAARI (clothe used in hanging by the deceased) from the spot. Photographs of the crime were taken by the crime team.

2.) On the same day, ASI Ishwar Singh got the statement of Ganesh (father of deceased), Bharat (brother of deceased) and Monika (sister of deceased) recorded before Executive magistrate, but statement of Smt. Lajwanti (mother of deceased) could be recorded on 26.05.22 as she was out of Delhi. In her statement before Executive Magistrate, Smt. Lajwanti alleged that marriage of her daughter Sarika was solemnized with Manish Malporiya on 07.11.2019 and since then she was tortured by her husband & In-Laws for less dowry articles and specifically for not bringing Car as dowry. Smt. Lajwanti also raised other allegations of harassment and cruelty done by husband & In-Laws of deceased during the advance stage of her 1st pregnancy. That time, deceased made complaint against her husband and in-laws in police station but after counseling of deceased Sarika and her husband at women commission matter was sorted out amicably and Sarika again started living with her husband & in-laws at her matrimonial home. Smt. Lajwanti alleged that during the second pregnancy deceased Sarika was again subjected to cruelty by her husband and in-laws including petitioners. Smt. Lajwanti further alleged that on 24/05/2022 she went to Mumbai. So, before her departure her daughter Sarika (deceased) came to meet her at home and that time Sarika was not happy. On the very next morning i.e. on 25/05/2022 complainant Lajwanti heard the sad news of her daughter Sarika's death.

3.) Further, the Postmortem of deceased Sarika was conducted on 26.05.22 and the body of deceased was handed over to her parents. Post-mortem Report of deceased Sarika revealed the cause of death as "asphyxia as a result of antemortem hanging". As per statements of parents & other family members of the deceased and as per circumstances, a case vide FIR No. 261/22, Dated 26.05.22, U/s 498A/304B/34 IPC, P.S. Prasad Nagar was registered, and investigation was taken-up.

4) During the course of investigation accused Manish Malporiya (husband of the deceased) was arrested on 10.06.22. After interrogation, he was produced before the Ld. MM and was sent to judicial custody.

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7) It is further submitted that the mobile phone of the deceased was sent to FSI for retrieving its data. Meanwhile, co-accused persons Anil Malporiya (Jeth) & Jyoti Malporiya (Jethani) were granted anticipatory bail by the Hon'ble Session Court, Tis Hazari Courts, Delhi. Daya Ram Malpriya (father-in-law) and Rukma Devi (mother-in-law) were granted bail on 22.02.2024 by Ld. Trial Court. Coaecused Anil Malporiya and Jyoti Malporiya were formally arrested in this ease and other eo-aeecused Daya Ram Malporiya and Rukma Devi were relieved without taking any coercive step as per the direction of Hon'ble High Court of Delhi.

8.) After completion of the investigation, charge sheet u/s 304-B/498-A/34/IPC has been filed against the accused persons Manish Malporiya (Petitioner), Dayaram Malporiya, Rukma Devi, Anil Malporiya and Jyoti Malporiya while alleged Deepak (brother-in-law/Nandoi) and Rajni (sister-in-law/Nanad) were kept in column no. 12 as suspect as not sufficient evidence came on record.

9.) It is also worthwhile to mention here that the Hon'ble Trial Court has framed the charge u/s 304-B/498-A/34/IPC against the accused persons i.e. Manish Malporiya (husband) and Rukma Devi (mother-in-law) vide order dated 17/07/2023. However, Ld. ASJ has discharged the other accused persons Daya Ram Malporiya (father-in-law). Anil Malporiya (brother-in-law) and Jyoti Malporiya (sister-in-law) vide order dated 11/07/2023. The case is pending trial and the next date before the trial court is 20/08/2024 for prosecution evidence.”

4. Learned counsel appearing on behalf of the applicant submits that the statement of the complainant on the basis of which the present FIR was registered made general allegations of demand of dowry with respect to the present applicant as well as the other co-accused persons. It is submitted that the allegations are general in nature and common to all the accused persons. It is further stated that all the other co-accused persons have already been granted anticipatory bail. It is further submitted that in the allegations made by the complainant in the FIR, no specific averment was made with respect to demand of dowry by the applicant soon before the death of his wife, i.e., the deceased, which is a necessary ingredient under Section 304B of the IPC. It



is further submitted that the father, the brother and the sister-in-law of the present applicant have been discharged by the learned Trial Court *vide* order dated 11.07.2023.

5. It is further submitted that the applicant has been in judicial custody since the date of his arrest, i.e., 10.06.2022 and has undergone incarceration of nearly 3 years. It is submitted that the prosecution has cited 26 witnesses and out of them, only 8 have been examined so far. All the public witnesses including the complainant and other relatives of the deceased have been examined.

6. Learned counsel for the applicant has placed reliance on the following orders passed by the Coordinate Benches of this Court, where under similar circumstances bail has been granted under Section 304B IPC :

a) **Raghav Thakur vs. State, BAIL APPLN. 1397/2023 dated 05.10.2023**

b) **Vishal Gupta vs State (NCT of Delhi), BAIL APPLN. 3004/2022 dated 27.03.2023**

c) **Sonu Mohd. Imran vs. State of NCT of Delhi, BAIL APPLN. 759/2024 dated 10.04.2024**

7. The reliance placed on the aforesaid orders is with respect to the fact that since the material witnesses have been examined and trial is likely to take some time to conclude, no purpose would be served by keeping the applicant in judicial custody.

8. *Per contra*, learned APP for the State, assisted by learned counsel for the complainant, submits that the incident had occurred on 25.05.2022 and the present applicant was arrested on 10.06.2022, after efforts being made by the Investigating Officer. It is submitted that during her lifetime, the deceased had



also filed a complaint, in which allegations were made with respect to demand of dowry and other cruelty meted out to her by the applicant and her in-laws.

9. Attention of this Court has been drawn to statements of the witnesses recorded before the learned Trial Court to show that there was demand of dowry made by the applicant and his family members at the time of marriage and soon after the marriage. It is also alleged that during honeymoon, the applicant had asked for expenses from the deceased. It is pointed out that PW-1 in her course of examination stated that the applicant had taunted her daughter (deceased) that since her brother has got a government job, her younger sister would get a car in dowry, which he did not get in his marriage.

10. It has further argued that the death has occurred in the intervening night of 24/25.05.2022 and the present applicant has given no explanation with respect to his whereabouts at that relevant point of time.

11. Learned counsel for the applicant submits that he has already challenged the order on charge *qua* the other co-accused persons as well as conversion of charge framed under Section 304B of the IPC against the present applicant to Section 302 of the IPC.

12. Learned counsel appearing on behalf of the applicant has placed reliance on a judgment of the Hon'ble Supreme Court in **Satbir Singh and Another v. State of Haryana, 2021 INSC 301**, particularly on paragraph nos. 9, 14 and 36 to submit that expression "*soon before death*" should not be strictly construed keeping in mind the intention of the legislature behind the objective for which the section enacted. It is submitted that the expression "*soon before*" should not mean immediately before and that no straight-jacket formula can therefore be laid down to define "*soon before*". Reliance is also placed on an order of the Hon'ble Supreme Court in **Damodar and**



Another vs. State of Uttar Pradesh CRL. APPL. 960/2018 dated 24.07.2024, particularly on paragraph 8 with regard to the presumption under Section 113B of the Indian Evidence Act. Reliance is also placed upon a judgment of the Coordinate Bench of this Court in **Kuldeep Singh vs. The State Govt. of NCT of Delhi 2025:DHC:230** to submit that mere period of incarceration and examination of public witnesses should not be sufficient to grant bail.

13. Heard learned counsel for the parties and perused the record.

14. The deceased in the present case was married to the present applicant on 07.11.2019 and she had committed suicide by hanging herself from the ceiling fan with a stole on 25.05.2022 at her matrimonial home. In the statement recorded on 26.05.2022 before the Executive Magistrate, the complainant, i.e., mother of the deceased stated that the deceased was married to the present applicant on 07.11.2019 and on the date of marriage, the applicant's family quarrelled on account of quality of food and brother of the applicant commented that they would order burger from McDonald and insulted them. It is further alleged in the said statement that when the deceased went to her matrimonial home, she was taunted that she did not bring any car and they were expecting a car in dowry. It is further alleged that the mother-in-law of the deceased, i.e., the mother of the applicant, used to comment that the neighbours were taunting them that no car had come in the marriage of the applicant. It is further alleged that when the first child was born in September, the parents of the applicant and his younger sister came to the deceased's paternal house and administered castor oil to her. It is alleged that the child after birth got breathing problems and was admitted to nursery. It is stated that the in-laws of the deceased had incurred the expenses of the nursery



for 3-4 days and thereafter did not come forward to deposit the bill and the parents of the deceased had to deposit the bill. Allegations are that the mother of the present applicant had placed certain inauspicious articles near the pillow of the new-born child, which are usually placed at the time of death of any person. It is alleged that after the expiry of the child, the deceased was left at her paternal house and was not contacted by her in-laws. It is stated that a complaint was lodged at P.S. Punjabi Bagh and after certain meeting in the CAW Cell, the deceased joined her matrimonial home and a few months thereafter, she became pregnant. It is further alleged she was not given food during her pregnancy and she used to make calls to the complainant asking her to send something to eat. On 24.05.2022, it is alleged that the deceased came to her parental house and was not looking happy and the deceased thereafter made a call at 11.06 PM and asked the complainant not to worry about her.

15. In the aforesaid complaint, the allegation with respect to demand of dowry was at the time of marriage of the present applicant. The portion relied upon by learned counsel for the complainant, in testimony made by the complainant during the course of evidence is a matter of trial. The fact that in the initial statements there was no allegation with respect to demand of dowry soon before the incident of death of the deceased cannot be ignored for the purpose of the present application. It is further noted that the complaint relied upon by learned counsel for the complainant which was filed by the deceased during her lifetime to SHO PS Karol Bagh is not a part of the chargesheet. Similar allegations have been made against the parents of the applicant who have been granted anticipatory bail.

16. The presumption under Section 113B of the Evidence Act being



rebuttable is a matter of trial. For the purpose of the present application, it is noted that there are contradictions between the initial statement given by the complainant and her testimony before the learned Trial Court, which shall be adjudicated by the Court concerned during the course of trial. The judgment relied upon by learned counsel for the complainant in **Kuldeep (supra)** relates to a case where charges were framed under Section 302 of the IPC and as noted therein postmortem report categorically recorded 33 anti-mortem injuries and details of manual strangulation and smothering of the deceased therein.

17. Nominal Roll dated 10.02.2025 filed by Superintendent of Prisons, Central Jail no. 7, Tihar, New Delhi reflects that the applicant has been in judicial custody since 10.06.2022 and as on 07.02.2025, he has undergone a sentence of 2 years 7 months and 28 days. The prosecution has cited 26 witnesses, out of which only 8 have been examined so far and the trial is likely to take time to conclude. The complainant and other family witnesses have already been examined.

18. In totality of the facts and circumstances of the case, the applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with one surety of the like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the learned Trial Court as and



when the matter is taken up for hearing.

iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.

v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

19. The application is allowed and disposed of accordingly.

20. Pending application(s), if any, also stands disposed of.

21. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein are only for the purpose of the present bail application.

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

23. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

APRIL 23, 2025/bsr/Pc

Click here to check corrigendum, if any