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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3009/2024 & CRL.M.A. 3593/2025, CRL.M.A. 3594/2025**
SUMIT KUMARPetitioner

Through: Mr. Manish Sangwan, Mr. Harsh Khatri, Mr. Nitesh Kakran, Mr. Mohit Mehra, Mr. Naveen Shokhanda, Advs.

versus

STATE NCT OF DELHIRespondent
Through: Mr. Sunil Kr. Gautam, APP with SI Dharamveer, PS Chhawla

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **19.02.2025**

CRL.M.A. 3595/2025

Exemption allowed, subject to all such exceptions.

The application is disposed of.

BAIL APPLN. 3009/2024

1. This is a petition seeking regular bail in FIR No.16/2022 dated 06.01.2022 registered at P.S. Chhawala, Delhi under Sections 498A/304B/34 of IPC.
2. The brief facts of the case are that the FIR was registered by the mother of the deceased, who stated that the daughter of the complainant was married to the petitioner for last four years. In the evening on 05.01.2022, she received a call from a neighbour of the petitioner that her daughter had died. The complainant reached the



house of the petitioner at about 9:00 PM and found no family member or her daughter at his house.

3. It is also stated in the FIR that about 4 months earlier, the petitioner and his family had tried to kill the deceased and the same was duly informed to the Police Station and MLC was also conducted. As the family members of the deceased were unable to meet the dowry demands made by the petitioner, the petitioner along with his family members had killed the complainant's daughter.
4. It is stated by Mr. Sangwan, learned counsel for the petitioner that ever since the date of arrest i.e. 07.01.2022, the petitioner has been in custody, thereby making the custody of the petitioner more than three years.
5. Mr. Gautam, learned APP opposes the bail application and states that the allegations against the petitioner are serious, the complainant as well as the brother of the deceased have supported the case of the prosecution, hence there is a presumption under Section 113B of Evidence Act as the death occurred within 7 years of marriage and there is an MLC of 23.08.2021 which shows external injuries upon the deceased victim.
6. I have heard learned counsel for the parties.
7. The Hon'ble Supreme Court has time and again interpreted the phrase "soon before her death" and more particularly in ***Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80*** wherein it was observed as under:-

"9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to



show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to the expression “soon before” used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods “soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession”. The determination of the period which can come within the term “soon before” is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb



the mental equilibrium of the woman concerned, it would be of no consequence.”

(Emphasis added)

8. Further, the Hon’ble Supreme Court in case titled "**Charan Singh & Charanjit Singh Vs. State of Uttarakhand**" of 2023 SSC OnLine SC 454 is on similar lines and operative para 11 and 16 read as under:-

“11.The interpretation of Sections 304B and 498A IPC came up for consideration in Baijnath's case (supra). The opinion was summed up in paras 25 to 27 thereof, which are extracted below:—

“25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section exposits “cruelty” as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any



demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression “dowry” is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression “cruelty”, as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

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16. The cruelty or harassment has to be soon before the death. In his evidence, Pratap Singh (PW-1), father of the deceased stated that two months after the marriage his daughter came to the parental home stating that the appellant was demanding motorcycle, however, she was sent back. Thereafter, she again came and apprised him that the demand of motorcycle was being pressed by the appellant. Besides motorcycle, land was also demanded. There is nothing in the statement that any such demand was raised immediately before the death as the incidents sought to be referred to are quite old. He admitted in his cross examination that at the time of funeral, his mother-in-law and two brothers-in-law were present. However, they were threatened not to lodge the complaint. Balbir Singh (PW-2), maternal uncle of the deceased, merely stated that at the time of marriage sufficient dowry was given by the father of the deceased. However, later he heard that the appellant had demanded the motorcycle. In his cross-examination, he admitted that he was living at the distance of about one furlong from the house of the appellant. No dowry was demanded at the time of marriage of the deceased. He did not state that the deceased ever shared with him about the demand of dowry or any harassment on account of non-



fulfilment thereof though he was living close to the matrimonial house of the deceased.”

9. In the present case, the last incident of harassment and dowry demand is about 4 months prior to the date of incident i.e. 05.01.2022. Further, there have been no other fresh instances recorded after August, 2021. Even assuming the best case of the prosecution to be correct, the prosecution has not been able to satisfy the test of “soon before her death”. Additionally, the incident of August, 2021 was duly compromised before the Police Station, wherein the deceased victim had undertaken that she would not fight with the family of the petitioner any more.
10. The Hon’ble Supreme Court in ***Union of India v. K.A. Najeeb, (2021)3 SCC 713*** has observed that if the Court is of the view that the trial is not likely to be concluded in near future and the accused person has undergone substantial period of incarceration, the accused should be released on bail in order to protect the fundamental right of speedy trial of the accused which flows from Article 21.
11. In addition, the accused cannot be put in jail for an indefinite period. The accused is still an undertrial prisoner and there is a presumption of innocence in his favour.
12. In the present case, the petitioner has been in custody for a period of more than three years and has no other criminal antecedents. Further, the petitioner has a six years old daughter to take care of. As of today, only 09 witnesses have been examined out of 21 witnesses and it does not seem that the trial will conclude in the near future.



13. For the said reasons, the present petition is allowed and the petitioner is directed to be released on bail subject to the following terms and conditions:-

- A. The petitioner shall furnish a personal bond in the sum of Rs 10,000 (Rupees ten thousand only) each with 1 surety in the like amount, to the satisfaction of the concerned trial court;
- B. The petitioner shall not leave the country without the permission of the concerned court and if the petitioner has a passport, he shall surrender the same to the concerned trial court;
- C. The petitioner shall furnish to the IO concerned the cell phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched on at all times;
- D. The petitioner will furnish his permanent address to the concerned IO and in case he changes his address, he will inform the IO concerned;
- E. The petitioner shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;
- F. The petitioner shall appear in Court on every date of hearing unless exempted;
- G. The petitioner shall not communicate with, or come into contact with the complainant or any of the prosecution witnesses, or tamper with the evidence of the case.



14. Nothing stated hereinabove shall tantamount to an expression of opinion on the merits of the case.
15. A copy of this order be communicated to the concerned jail authorities for necessary compliance.
16. The petition stands disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 19, 2025/PK