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

+ **BAIL APPLN. 3675/2024**

LAL KISHORE YADAV

.....Petitioner

Through: **Mr. Rohan Joachim Alva and Mr.
Anant Sanghi, Advocates**

versus

THE STATE (GOVT. OF NCT) DELHI

.....Respondent

Through: **Mr. Laksh Khanna, APP for State
along with SI Shivendra Singh, PS:
Subhash Place and SI Neeraj Rathi,
IFSO, SPL. Cell**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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28.01.2025

1. The present application has been filed under Section 483 of the Bhartiya Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), seeking grant of Regular Bail to the accused/Applicant in the FIR No: 100/2021, dated 06.03.2021 registered at P.S. Subhash Palace under sections 498A/306/506/34 of the Indian Penal Code, 1860 ('IPC').

2. The brief facts leading to the registration of the subject FIR are as follows: A PCR call vide GD No. 120-A was received at 22:45 hour on 04.03.2021 reporting the suicide by a woman after hanging her two minor children. Upon reaching the spot, police officials found the victim, Savita, wife of the accused, hanging from a ceiling fan. Her two minor children, Anshika (aged 4 months) and Aditya (aged 3 years), were also found hanging in the house. Subsequently on 06.03.2021, an inquest was conducted based on a written complaint submitted by Sh. Shiv Dutt Yadav, the father of the victim before the Sub-Divisional Magistrate (SDM),



Sarasvati Vihar. The complainant alleged that the accused/Applicant began harassing the victim, Savita and demanding dowry immediately after marriage. Based on this complaint, the present FIR was registered on 06.03.2021 under Section 498A/306/506/34 IPC, and the accused/Applicant was arrested on 06.03.2021.

3. Accused Lal Kishore Yadav and the victim, Savita had been married for approximately 5 years as on the date of incident i.e. 04.03.2021.

4. Following further investigation, the Investigating Officer ('I.O.') filed a chargesheet against the Applicant and other co-accused under Sections 498A/304B/306/506/34 IPC. Subsequently, the learned Trial Court, vide order dated 10.04.2023, framed charges under Sections 498A/304B/306 IPC against the Applicant.

5. There are 30 witnesses listed in the chargesheet. 12 witnesses have been examined, which includes the family members of the victim and the immediate neighbours including landlady of the house where the victim was residing with the accused prior to the unfortunate incident. The said 12 witnesses includes all material witnesses. The remaining 18 witnesses are official witnesses including police officials.

6. As per the Nominal Roll, the Petitioner has been incarcerated since 06.03.2021 and therefore as on date has already undergone incarceration as an undertrial for 3 years 10 months 22 days.

7. The learned Counsel for the Applicant submits that the Applicant, who is presently 32 years of age, has been incarcerated for nearly four years, and the conclusion of the trial is likely to take time. He states that, at no point prior to 04.03.2021, did the victim's family make any complaint or allegation against the Applicant regarding dowry demands.



8. He states that an essential condition for prosecuting a person under Section 304B IPC is the existence of a demand for dowry 'soon before' the victim's death. However, in the present case, there is no substantive evidence on record to establish any such demand by the Applicant or his family. He states that as per PW-5, the sister of the victim an alleged incident of demand occurred during the festival of Diwali in 2020 (November 2020). He states that the said allegation is insufficient to bring home a charge under Section 304B IPC since the alleged incident did not occur 'soon before' the death of the victim, which occurred in March, 2021. He states that the father of the victim did not provide any evidence to substantiate the allegation that dowry was demanded by the accused/Applicant. He states that PW-12 (uncle of the victim) has testified that he had never heard whether accused/Applicant used to beat or harass the victim, Savita.

9. He states that as per the allegations levied against the Applicant in the chargesheet, the victim wished to attend the *mundan* ceremony of the Applicant's brother's son which was scheduled for 03.03.2021. However, the accused/Applicant allegedly did not permit the victim to attend the said ceremony. The *mundan* ceremony was instead attended by the victim's brother, Nitish, and cousin, Gautam, who were allegedly mistreated at the event by the relatives of the accused/Applicant. He states that it is alleged that this information was later conveyed to the victim by Gautam, which purportedly caused a dispute between the couple. He states that this cannot constitute grounds for prosecution of the Applicant under Section 304B IPC, as neither the victim nor the Applicant attended the *mundan* ceremony, where the alleged mistreatment occurred.



10. He emphasizes that the prosecution has failed to establish any connection between the victim's death and a demand for dowry. Regarding the charge under Section 498A IPC, reliance is placed on the statements of neighbors, i.e., PW-2, PW-3, and the landlady PW-4, who testified that they had never witnessed any ill-treatment of the victim by the Applicant or any quarrel between the couple.

11. He states that the postmortem report confirms the absence of fresh or recent external injuries on the victim's body, contradicting allegations that the Petitioner assaulted the victim.

12. He states that in the case of marital discord, disputes and frictions between the married couple the provision of Section 306 IPC cannot be attracted. He relies upon on the Judgement of Supreme Court in the case of **Bhagwan Das v. Kartar Singh**¹ to support his contention.

13. In reply, the learned Additional Public Prosecutor ('APP') contends that in the facts of the present case, there is a reversal of the burden of proof, and the presumption under Section 113B of the Indian Evidence Act, 1872 (Act of 1872), is applicable as all the essential ingredients of Section 304B IPC are satisfied.

14. He states that the death of the victim was caused within the 7 years of her marriage and was due to the injuries caused otherwise that under normal circumstances. He states that the victim was subject to cruelty and harassment by the accused/Applicant and his family for the demand of dowry.

¹ (2007) 11 SCC 205



15. To substantiate the claim that the victim was subjected to cruelty and dowry demands, the learned APP relies on the testimony of the victim's mother (PW6), who deposed before the Trial Court that, following the birth of Anshika (the victim's daughter), the Applicant demanded dowry in the presence of the victim's sister, Anju (PW-5). He submits that the statement of PW6 corroborates the testimony of Anju (PW5) and the victim's father (PW1).

16. He relies upon the Judgement of Supreme Court in the case of **Rajinder Singh v. State of Punjab**², to contend that the phrase 'soon' used by the legislature in the language of Section 304B of IPC does not mean 'immediate'. He states that Supreme Court has opined that demand of dowry is a continuing cause for the death of the married woman under Section 304B IPC.

17. He relies upon the judgment of this Court in **Jayanti Prasad Goel v. Smt. Sumitra Jain & Ors**³ to contend that the effect of presumption of Section 113B of the Evidence Act has to be taken into consideration at the stage of bail and the said presumption has to be rebutted by the Applicant.

18. This Court has heard the submission advanced by the learned counsels for the parties and perused the record.

19. Prosecution has lead evidence of PW-1 (father), PW-6 (mother) and PW-5 (sister) of the victim to contend that demand of dowry was raised by the accused. Prosecution has also relied upon the statement of the victim's cousin and brother PW-7 and PW-8 to contend that there was mistreatment of the cousin and the brother at the hands of the family members of the

² (2015) 6 SCC 477

³ 1993 SCC Online Del 482.



accused. Prosecution has thus contended that the victim was subjected to cruelty soon before her death. A perusal of the statements of the witness shows that the last specific date and time of demand of dowry by the accused/Applicant is with reference to Diwali (November) in the year 2020, whereas the death occurred on 04.03.2021. PW-1 and PW-6 were not present when the said demand was made and have relied upon the hearsay of PW-5.

20. The incident of ill-treatment narrated by PW-7 and PW-8 is with respect to the *mundan* ceremony held on 03.03.2021 but admittedly at the said ceremony neither the Applicant/accused nor the victim were present. The said incident is also about disrespect shown to the cousin and the brother and makes no reference to any demand for dowry.

21. In these facts, keeping in view the judgment of Supreme Court in **Charan Singh v. State of Uttarakhand**⁴ the prosecution before the Trial Court has to prove that the cruelty or harassment by the accused to the victim was soon before the death to invoke the presumption under Section 304B IPC and Section 113B of the Act of 1872. However, in the facts of this case as per the evidence led of PW-5 the alleged demand for dowry was last made in November, 2021 i.e., 5 months before the date of death and therefore not satisfy the condition of 'soon before' as stipulated in Section 304B IPC.

22. Significantly, the neighbours PW-2, PW-3 and PW-4 have stated in affirmative that they had never heard the couple quarreling or heard any ill-treatment of the victim, Savita by the accused/Applicant herein.

⁴ 2023 SCC Online SC 454, at para 21



23. In addition, though the victim has died within 5 years of her marriage, there were admittedly no fresh or recent external injuries present over her body as per postmortem report. The prosecution has stated that death happened due to suicidal hanging by the victim. The prosecution accepts that the Applicant/accused was not present at home when the death occurred.

24. The Supreme Court after considering its previous decisions held in **Rajinder Singh** (Supra) that the expression 'soon before' in Section 304-B IPC permits elasticity and therefore the proximity test has to be applied keeping in view the facts and circumstances of each case. In this decision Supreme Court held that facts brought on record by the prosecution must show the existence of a proximate live-link between the effect of cruelty based on dowry demand and the death of the victim.

25. Since one of the ingredients of the offence under Section 304-B IPC is that such cruelty should have been meted out to the deceased soon before her death, it is for the prosecution to establish affirmatively that the victim was subjected to cruelty and harassment based on dowry demand soon before her death. In the facts of the present case, this Court finds that the alleged dowry demand during festival of Diwali (November 2020) allegedly made in the presence of PW-5 (sister) is a weak piece of evidence and is insufficient to prima facie sustain the prosecution of the accused/Applicant under Section 304-B IPC as it is not in close proximity. Especially, since the neighbours (PW-2 and PW-3) and the landlady (PW-4) residing above the house of the accused/Applicant have deposed that they never heard any quarrels between the accused/Applicant and the victim. So also, the incident of alleged ill-treatment of the brother and cousin of the deceased at the *mundan* ceremony on 03.03.2021, which happened immediately before the



tragic incident of 04.03.2021 cannot be relied upon qua the accused/Applicant to invoke Section 304-B IPC as admittedly neither the Applicant nor the victim attended the said ceremony. Thus, the prosecution has, at this stage, prima facie failed to establish any proximate live-link between the suicidal death of the victim on 04.03.2021 with the alleged dowry demand by the accused/Applicant made on Diwali of 2020.

26. In addition, pertinently 12 material witnesses from the public have already been examined and therefore there is no threat that the Applicant will tamper evidence or influence the witnesses. There are 18 witnesses remaining, who are the official witnesses including police officials and there is no likelihood of their being influenced. However, the trial is likely to take some time and the Applicant has already been incarceration for a period of 3 years 10 months 22 days as an under trial.

27. The Supreme Court in the case of **Javed Gulam Nabi Shaikh v. State of Maharashtra**⁵, observed as follows:-

“16. Criminals are not born but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article

⁵ (2024) 9 SCC 813



21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

28. 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 applicant 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. Applicant will not leave the country without prior permission of the Court.
- ii. Applicant, during the tenure of bail, shall reside at the permanent address i.e. 530, I-Block, Anand Vas Shakurpur Colony, Delhi-110034 and Shop No. 14, M. D. Market, Pitampura, Delhi-110034. And in case of change of address an intimation shall be provided to the Trial Court and to the IO.
- iii. Applicant shall appear before the Court as and when the matter is taken up for hearing.
- iv. Applicant 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.
- v. Applicant 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.

29. 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.

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

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

MANMEET PRITAM SINGH ARORA, J

JANUARY 28, 2025/AKT