

(2022) 12 DEL CK 0084
In the Delhi High Court
Case No : Bail Application No. 2042 Of 2022

Abhishek Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-12-2022

Acts Referred:

Evidence Act, 1872 — Section 113B, 114
Indian Penal Code, 1860 — Section 34, 304B, 306, 498A
Code Of Criminal Procedure, 1973 — Section 161, 438, 439

Citation : (2022) 12 DEL CK 0084

Hon'ble Judges : Sudhir Kumar Jain, J

Bench : Single Bench

Advocate : I.H Syed, Aldanish Rein, Purshottam Sharma, Raghuvinder Varma, Anuj Kumar Gaur

Final Decision : Disposed Of

Judgement

Sudhir Kumar Jain, J

1. The present bail application is filed under section 439 Cr.P.C (hereinafter referred to as "the Code") for grant of regular bail on behalf of Abhishek Kumar (hereinafter referred to as "the petitioner") in FIR bearing no.0166/2021 registered under sections 498A/306/34 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") at P.S Tigri, Delhi.

2. It is reflecting from the records that the petitioner got married with Alka on 17.01.2019 at Arya Samaj Mandir without the consent of their parents. Alka (hereinafter referred to as "the deceased") has expired on 03.05.2021. Thereafter, at the instance of Pappi Devi (hereinafter referred to as "the complainant") who is the mother of the deceased, the present FIR was got registered under sections 306/498A/34 IPC.

2.1 It is alleged in FIR bearing no. 0166/2021 that the deceased got married with the petitioner against the consent and willingness of her parents in the year

2019. The petitioner and his parents, namely, Suman Devi and Ram Chandra and brother-in-law (dewar), namely, Sumit used to torture the deceased on account of dowry. The engagement ceremony of Akash who is the younger son of the complainant was fixed on 03.05.2021. The complainant had sent her two sons to bring the deceased at the parental home to attend the engagement ceremony of Akash but the petitioner did not allow them to meet with the deceased as such, sons of the complainant came back at their parental home without meeting the deceased. The petitioner and his mother Suman Devi (mother-in-law of the deceased) came at the parental home of the deceased at about 11:00 PM in the night on 03.05.2021 and left the deceased at the parental home. The physical condition of the deceased at that time was bad and on enquiry, she informed her parents that she was mercilessly beaten by the petitioner and his mother Suman Devi. In the night, the complainant and the deceased slept together in one room and in the morning, the complainant had gone out of the room to do the routine work. The complainant came back and called the deceased but she did not respond. The complainant had gone to the terrace where the deceased was not found. The complainant noticed that the lid of the water tank was open and found that the body of the deceased was lying there. The complainant called the other family members and the deceased was removed to HAH Centenary Hospital (Majeedia Hospital) where she had died.

2.2 A PCR call was received on 04.05.2021 at P.S. Tigri from Majeedia Hospital regarding the death of the deceased who was admitted in the hospital as "brought dead" after falling into the water tank which was recorded vide DD no. 26A. DD no. 26A was assigned to ASI Bacchu Ram who alongwith Ct. Kailash, went to Majeedia Hospital. ASI Bacchu Ram collected MLC in respect of the deceased wherein, concerned doctor mentioned that the deceased was "brought dead".

2.3 SDM, Saket examined the family members of the deceased and recorded the statement of the complainant, Girish Chandra, father of the deceased and Gagan, brother of the deceased. Thereafter, prima facie it was noticed that the petitioner and his family members subjected the deceased to cruelty for dowry demand and were responsible for the suicide of the deceased. Accordingly, the present FIR was got registered and further investigation was conducted. During investigation, the exhibits were collected and statements of the family members of the deceased as referred hereinabove were recorded.

3. The petitioner filed an application bearing no. 942/2021 for grant of anticipatory bail bearing no. 942/2021, which was dismissed by the Court of Additional Sessions Judge, Saket Courts, Delhi vide order dated 31.05.2021. The petitioner also filed another application bearing no. 2068/2021 under section 438 of the Code for grant of anticipatory bail before this Court which was ordered to be dismissed as withdrawn on 20.07.2021. The petitioner was arrested in the present case on 16.09.2021. The petitioner is stated to be in judicial custody.

3.1 The charge-sheet was filed under sections 498A/304B IPC after conclusion of

the investigation wherein the petitioner was implicated and Suman Devi (mother of the petitioner), Ram Chandra (father of the petitioner) and Sumit Kumar (brother of the petitioner) were placed in column no. 12.

3.2 The petitioner filed an application for grant of bail under section 439 of the Code which was ordered to be dismissed as withdrawn by the Court of Special Judge/NDPS, South, Saket Courts vide order dated 23.12.2021. The petitioner also filed another application for grant of regular bail in the month of January, 2022 which was got dismissed by the Court of Additional Sessions Judge-02, South, Sake Court vide order dated 20.01.2022.

4. In the present bail application, it is pleaded that the petitioner is in judicial custody since 16.09.2021. The petitioner is innocent and is falsely implicated in the present case for false allegation of dowry death and harassment. As per the FIR, there is no role or involvement of the petitioner in the present case. The petitioner is having clean antecedents.

4.1 The family members of the deceased were against the marriage of the petitioner with the deceased and even after marriage, they did not accept the petitioner as their son-in-law. The petitioner and the deceased were living happily after the marriage at Delhi and Ghaziabad. The deceased after one month of the marriage, was found to be suffering from 'Bipolar Affective Disorder Current Episode Manic with Psychotic Symptoms' since 2013. The petitioner after one month of the marriage i.e. on 21.02.2019, observed abnormal changes in the behavior of the deceased as she was not able to control her violent behavior. The deceased was got medically examined at Lady Hardinge Medical College & Hospital and was found to be suffering from depression episode since long time. The Doctor prescribed medicines for a month for the treatment of the deceased. The medicines for physiological disorder of the deceased were stopped since 27.03.2019 due to her pregnancy but the condition of the deceased was further deteriorated and her behavior had become more abrupt and violent. The petitioner and the deceased were blessed with a daughter on 26.10.2019 who was found to be suffering with congenital anomalies ruptured meningocele. The deceased was also got admitted in the Lady Hardinge Medical College & Hospital on 11.11.2019 by the petitioner for medical treatment as the deceased was suffering from 'Bipolar Affective Disorder Current Episode Manic with Psychotic Symptoms'. The petitioner also took the deceased to Institute of Mental Health and Hospital, Agra, U.P. on 16.11.2019 for better treatment and second opinion regarding her treatment. The deceased also remained admitted in Uttar Pradesh University of Medical Science (UPUMS) during period w.e.f. 20.11.2019 to 05.12.2019. The newly born daughter of the petitioner and the deceased has died on 13.12.2019 and due to this reason, the medical condition of the deceased has further deteriorated and her violent episodes became more frequent and aggressive. The petitioner again took the deceased for treatment to the Institute of Human Behaviour & Allied Science (IHBAS), Dilshad Garden where she was treated till 20.04.2021. The petitioner has taken proper care of

the deceased and performed his duty as husband. The deceased also attacked the petitioner on 02.05.2021 at about 3:30 AM while he was sleeping by a knife and inflict stabbed injuries in the neck. The petitioner could manage to save himself and the police was also called. The deceased also tried to hang herself by using a dupatta. The medical condition of the deceased has further deteriorated on 03.05.2021 and due to this reason, the petitioner took the deceased to her parental home for better care and treatment. The petitioner on 04.05.2021, in the morning at about 9:00 AM, made a telephone call to his brother-in-law to enquire about the condition of the deceased but he was informed by brother-in-law regarding the death of the deceased. The petitioner after receiving the information regarding the death of the deceased, got shocked. Thereafter the present FIR was got registered.

4.2 The petitioner sought the grant of regular bail on the grounds that he is innocent and has been falsely implicated by the prosecution. The deceased was suffering from depression for a long time. The petitioner was taken in police custody for investigation. The charge-sheet has already been filed after completion of investigation. The family members of the petitioner were placed in column no. 12 due to insufficient evidence against them. The medical documents submitted alongwith the charge-sheet were verified during the investigation. The petitioner prayed that he be released on bail on other grounds as mentioned in the application.

5. The respondent/State in the Status Report besides submitting factual position as mentioned hereinabove, also submitted that during investigation, the parents and brothers of the deceased were further examined and their statements were recorded under section 161 of the Code wherein they stated that the call recordings and notebook written by the deceased reflects that she was subjected to cruelty by her husband and his family members. The offence punishable under section 304B IPC was added during the investigation. It was also found after verification of medical documents that the deceased was suffering from the disease 'Bipolar Affective Disorder'. The post-mortem on the dead body of the deceased was conducted. Post-Mortem Report bearing PM no. 672/2021 dated 05.05.2021 was obtained from AIIMS, Delhi wherein, the cause of death was opined as "Asphyxia due to ante-mortem drowning" and the ante-mortem injuries as detailed in the Status Report were also found on the body of the deceased.

5.1 It was also stated on the basis of statement of the parents of the deceased recorded under section 161 of the Code that the deceased was subjected to mental and physical cruelty and harassment for demand of Rs.6 lacs by the petitioner and his mother. The deceased also made a complaint to CAW Cell in July, 2020 regarding the cruelty caused to her by the petitioner and his family members for Rs.6 lacs but again the petitioner and the deceased lived together. The petitioner continued to demand Rs.6 lacs from the deceased and for this reason, he caused mental and physical cruelty to the deceased and the deceased

was not allowed to meet or talk to her parents or family members. The physical condition of the deceased was very bad when she was left at her matrimonial home on 03.05.2021 as she was beaten by the petitioner and her mother-in-law for Rs.6 lacs. It is stated that the bail application deserves to be dismissed.

6. The learned Senior Counsel for the petitioner has advanced oral arguments as well as submitted written arguments. The learned Senior Counsel for the petitioner argued that the marriage of the petitioner with the deceased was scheduled to be held on 22.06.2018 but due to some dispute, the said ceremony was got cancelled. The petitioner and the deceased got married on 17.01.2019 at Arya Samaj Mandir without the consent of their parents. The petitioner soon after the marriage, observed abnormal changes in the behavior of the deceased as she was not able to control her violent behavior. The deceased was immediately taken to Lady Hardinge Medical College & Hospital on 22.02.2019 where she was diagnosed with 'Bipolar Affective Disorder'. A team of Doctors on 11.11.2019 also opined that the deceased was "over talkative, delusion, PMA and aggressive behavior and recently behaved violently towards another person besides other symptoms."

6.1 The learned Senior Counsel for the petitioner also referred the Modi Medical Jurisprudence and Toxicology on Bipolar Disorder where it is stated that "suicide or suicidal attempt is often the first and the last symptom of depressive illness. Suicide is well planned and is of great danger to the patient". The deceased also remained hospitalized for a period w.e.f. 11.11.2019 to 14.11.2019 but without any improvement. The learned Senior Counsel for the petitioner further argued that the deceased was also admitted in Uttar Pradesh University of Medical Sciences during period w.e.f. 20.11.2019 to 05.12.2019 for medical treatment of bipolar disorder.

6.2 The deceased on 16.10.2020, was taken to IBHAS where she was prescribed 'Lithium 300 Mg' and the said medicine as per Wikipedia is used as psychiatric medication, primarily for bipolar disorder and for major depressive disorder. It also reduces the risk of suicide. The deceased subsequently was prescribed for increased dose of 'Lithium 900 Mg'. The deceased was also prescribed Lithium by Red Cross Hospital on 27.04.2021. The learned Senior Counsel for the petitioner also referred the injuries stated to be found on the body of the deceased during post-mortem by referring Modi Medical Jurisprudence. The learned Senior Counsel for the petitioner during the course of arguments also cited judgment Subhan Ali and another V State passed by the Co-ordinate Bench of this Court on 27.11.2006. It was argued that the accused/petitioner be granted regular bail.

7. The counsel for the complainant also submitted the written arguments wherein it is stated that the marriage between the petitioner and the deceased could not be solemnized in the year 2018 due to the demand of dowry, however, the petitioner started contacting the deceased and assured that no dowry would be taken. The petitioner and the deceased solemnized their marriage on 17.01.2019. The deceased was subjected to cruelty for dowry demands. The

daughter of the petitioner and deceased also died on 13.12.2019 in mysterious circumstances. The petitioner also worked/employed as CSSD Technician at IHBAS Hospital. The deceased was subjected to cruelty for dowry demand of Rs.6 lacs. The petitioner did not provide appropriate medical care to the deceased. The deceased was also used to be beaten by the petitioner and his family members and was not provided basic amenities. The deceased also lodged a complaint at P.S. Tigri on 30.01.2020 regarding the torture caused to her due to dowry demand and the petitioner had agreed to the deceased back to the matrimonial home. The petitioner and his family members insulted the family of the deceased on 11.04.2021. The deceased was not allowed to join the engagement ceremony of her brother which was scheduled for 03.05.2021. The deceased alongwith the petitioner and her mother-in-law, namely, Suman Devi came at her parental house and at that time, she was having multiple injuries and on enquiry, she informed that she was beaten by the petitioner and her mother-in-law, namely, Suman Devi. The petitioner and his family members used to demand continuously Rs.6 lacs from the deceased and due to which, she had died. The counsel for the complainant also mentioned various other facts in the written arguments.

8. The Additional Public Prosecutor for the State/respondent advanced arguments mostly on the basis of facts as mentioned in the Status Report.

9. It is reflecting that initially, the marriage of the petitioner and the deceased was fixed by their parents and engagement ceremony was scheduled to be held on 22.06.2018 which was cancelled due to some dispute. The petitioner and the deceased got married on 17.01.2019 at Arya Samaj Mandir without the consent of their parents. A daughter was born out of their marriage on 26.10.2019 who expired due to medical condition. The deceased soon after the marriage, was diagnosed with 'Bipolar Affective Disorder' as appearing from the medical documents placed on record. The deceased was also treated in various hospitals. The Department of Psychiatry, Lady Hardinge Medical College & Hospital and associate hospital also diagnosed the deceased with 'Bipolar Affective Disorder'. The deceased was also given 'Lithium 300 Mg' which was also increased to 900 Mg subsequently. It was also noticed from the assessment of the deceased made on 11.11.2019 that she was having symptoms of "over talkativeness, delusion, PMA and aggressive behavior" besides other symptoms.

9.1 The complainant in FIR did not refer the demand of Rs.6 lacs alleged to have been made by the petitioner and their family members from the deceased specifically and only made a general allegation that the deceased was tortured by the petitioner and his family members for dowry demands. The statements of the complainant and her family members were recorded by the SDM, Saket wherein they did not make any specific allegation regarding the demand of Rs.6 lacs by the petitioner and his family members from the deceased and due to this reason, she was subjected to mental and physical cruelty. It is reflecting from Status Report submitted by the respondent/State that during the investigation, the

statements of the parents of the deceased were recorded under section 161 of the Code wherein they have referred dowry demand of Rs.6 lacs alleged to have been made by the petitioner and his family members and due to this reason, the deceased was subjected to mental and physical cruelty and harassment.

9.2 At this stage, it is appearing that the general allegation regarding the dowry demands were made by the parents of the deceased including the complainant in the complaint culminated into registration of FIR and in the statements made before the SDM, Saket. The alleged dowry demand of Rs.6 lacs was firstly made in the statement recorded under section 161 of the Code. The deceased was suffering from 'Bipolar Affective Disorder' and was given medicines which were also enhanced subsequently. It is correct that during the post-mortem, certain injuries were found on the dead body of the deceased but it does not reflect that she was subjected to physical cruelty for dowry demands. The petitioner is in judicial custody since 16.09.2021. The charge-sheet is already filed.

9.3 The Supreme Court in Kunhiabdulla & another V State of Kerala, (2004) 4 SCC 13 observed as under:-

11. 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. 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 the presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon 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 its 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 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.

10. After considering all facts, the petitioner is admitted to bail on furnishing a personal bond in the sum of Rs. 25,000/- with one local surety of the like amount to the satisfaction of the concerned trial court with the following conditions:-

i. That the petitioner shall provide his mobile phone number to the concerned Investigating Officer (IO) immediately after release which shall be kept in working condition at all times;

ii. That the petitioner will mark his presence before the concerned Investigating Officer on 2nd and 4th Friday of each English calendar month pre conclusion of trial;

iii. That the petitioner shall not leave the country without prior permission of the Court;

iv. That the petitioner shall not indulge contact or communicate with the family members of the deceased;

v. That the petitioner shall not temper with the evidence.

11. The present bail application alongwith pending applications, if any, stands disposed of.

12. Any observation in this order shall not be taken as any opinion on final merits of the case.

13. Dasti.