

(2023) 07 DEL CK 0206
In the Delhi High Court
Case No : Bail Application No. 2189 Of 2023

Akash Varun

APPELLANT

Vs

State Of N.C.T. Of Delhi

RESPONDENT

Date of Decision : 28-07-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304B, 498A
Code Of Criminal Procedure, 1973 — Section 439

Citation : (2023) 07 DEL CK 0206

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Ravindra Narayan, Amit Ahlawat

Final Decision : Disposed Of

Judgement

Rajnish Bhatnagar, J

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 1/2023 under Sections 498A/304B/34 IPC, registered at Police Station Farsh Bazar.

2. In brief the facts of the case are that one Shalini committed suicide on 02.01.2023, thereafter SDM recorded the statement of the parents of the deceased. The present FIR was registered on the statement given by the mother of the deceased wherein she alleged that her daughter Shalini was married on 29.11.2018 according to Hindu rites and ceremonies. A sum of Rs.11,000/- was given in roka before marriage, clothes worth Rs.21,000/- were given in engagement, and dowry articles worth Rs.5,00,000/- were given at the time of marriage.

3. It is alleged by the complainant that on the specific request of the father-in-law of her deceased daughter, the Baratis were welcomed in the Banquet Hall, situated at Gazipur and the Baratis consisted of 500 people. She further alleged that after the marriage, father-in-law of her daughter Shalini (since deceased)

taunted them from time to time by saying that by not welcoming the Baratis properly, he has been humiliated in the society and also stated that nothing has been given in the dowry. She further alleged that after one year of marriage of her daughter, when she asked her daughter as to why she was not wearing ornaments, she was told by her daughter that her husband had mortgaged all her ornaments and taunted her by saying that she has not come from a well to do family and has brought nothing in dowry. She further alleged that husband of her deceased daughter used to say that her parents had not given a car and has also not given sufficient gold and whatever gold was given has been mortgaged for his work purposes. It is further alleged by the complainant that about a year ago, her son-in-law i.e Akash came to her house and said that his mother was not at home and demanded a sum of Rs.1,00,000/- and promised to return the same in a day or two after his mother returns but the said money given to him has not been returned. It is further alleged that Akash Varun (husband), mother-in-law (Smt. Shiksha), father-in-law (Padam Singh), younger brother-in-law (Elu) and sister-in-law (Ginni) who is married and lives in Bulandshahar all used to taunt her deceased daughter for dowry and also used to torture her mentally.

4. According to the complainant, her daughter was not having any child, so she was getting treatment for her ovaries for the last 9-10 months and it is alleged that her son-in-law used to taunt her daughter that he would never make her mother and also never used to make relations with her. She further alleged that her daughter (since deceased) had told her that her husband was only 12th pass but he has tampered with her B.A degree and obtained a job in Noida by playing fraud. She further alleged that her son-in-law is a drunkard and on 01.01.2023 at around 12.30 pm her son-in-law called her but she could not attend his phone as she was sleeping, so on 02.01.2023 at about 12.30 pm she phoned her daughter Shalini (since deceased) who told her that on previous night her husband i.e Akash Varun had abused her and gave beatings to her after getting drunk and had also threatened her that he would not keep her and would divorce her. This was not disclosed by her daughter (since deceased) to her parents-in-law but the complainant informed the parents-in-law of her deceased daughter about the incident.

5. It is further alleged by the complainant that Akash Varun her son-in-law used to take money from her son Sumit Kumar through Paytm. She further alleged that younger brother-in-law of her deceased daughter also used to threaten to kill her daughter. On 02.01.2023 at around 9.30 pm Akash Varun informed that her daughter Shalini was no more and they came to know that he had taken their daughter to Goel Hospital, Krishna Nagar. It is further alleged that when they reached house of Akash Varun, a neighbour told them that Akash Varun and her mother had wrapped something in a sheet and had left their house and when they reached hospital at about 10.30 pm, they came to know that her daughter was brought in the hospital in critical condition and she had expired. It is also alleged by the complainant that all the accused persons had tortured her daughter (since deceased) physically and mentally and they all had hanged her.

6. I have heard the learned counsel for the petitioner, learned APP for the State, perused the status report and also perused the records of this case.

7. It is submitted by the learned counsel for the petitioner that the petitioner is the husband of the deceased and there are no allegations against the petitioner with regard to demand of dowry or harassment in respect of demand of dowry. It is further submitted by the learned counsel for the petitioner that the deceased was not happy with her medical condition as she was unable to bear a child and her treatment was going on and there were chances that her ovaries would be removed because of this, she was disturbed. He further submitted that the photographs placed on record would show that the deceased was living happily with the petitioner and his family members. He further submitted that the petitioner is in judicial custody since 03.01.2023.

8. On the other hand, it is submitted by the learned APP for the State that the allegations against the petitioner are grave and serious in nature. It is further submitted that the petitioner has taken Rs.1,00,000/- from the parents of the deceased and despite assurance he has not returned the same. It is further submitted by the learned APP that the petitioner used to give beatings to the deceased after getting drunk. He further submitted that the petitioner even threatened the deceased that he would divorce her and also used to say that he would not make her mother and also stopped making physical relations with her.

9. In the instant case, the allegations against the petitioner which emerges from the FIR to the effect that after getting drunk he used to beat the deceased but in the FIR it is not stated that in that condition any dowry was demanded. There is an allegation that the petitioner demanded Rs.1,00,000/- which was given by the parents of the deceased but the FIR reveals that this demand was not a dowry demand and the petitioner was supposed to return this amount after two days as stated by him, though the amount was not returned but this incident happened about one year prior to the date of the incident.

10. From the contents of the FIR, it appears that the deceased was disturbed with her medical condition, otherwise the photographs placed on record show her in happy dispositions while living with the petitioner and his family members. There are allegations that the petitioner had stopped making physical relations with the deceased and used to threaten the deceased to give her divorce but these allegations were not because of some dowry demand were not fulfilled as nothing of this sort has been stated in the FIR. Even otherwise the allegations levelled in the FIR are without any date, month and time.

11. The present FIR has been registered under Section 498A/304B/34 IPC. The necessary ingredients of Section 304B IPC are under:-

“(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in

connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

12. The present FIR has been registered at the instance of the mother of the deceased. The petitioner in the instant case is the husband of the deceased. A perusal of the entire FIR which has been registered on the basis of the statement of the mother of the deceased, shows that it nowhere mentions about the demand of dowry by the present petitioner. Even otherwise, only bald allegations are there against the petitioner that he along with other family members used to taunt the deceased for dowry and used to give mental torture to the deceased. The perusal of the FIR further shows that there is no date, time, amount or the item of dowry that were ever demanded from the deceased has been mentioned. There is no specific allegation against the present petitioner that he demanded dowry or harassed the deceased in connection with any demand of dowry.

13. Nothing has been stated in the FIR that soon before the death of the deceased she was subjected to cruelty or harassment in connection with any demand of dowry. Chargesheet has already been filed. The petitioner/accused is in judicial custody since 03.01.2023. Therefore, in these circumstances, in the absence of any specific allegations of demand of dowry or causing harassment to the deceased in relation to demand of dowry, I am inclined to grant bail to the present petitioner. Accordingly, the present petition is allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like amount subject to the satisfaction trial court concerned on the following terms and conditions:

(i) The petitioner shall not influence the complainant or any of the witnesses of the prosecution.

(ii) The petitioner shall not leave the country without the permission of the learned trial court.

14. The bail application stands disposed of along with pending application, if any.

15. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.