

(2011) 03 DEL CK 0388

In the Delhi High Court

Case No : Bail Application No. 236 of 2011

Gursharan Kaur and Another

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 437, 438, 438(2)

Citation : (2011) 2 JCC 826

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : R.M. Tufail, Yogesh Kumar Dullar and Vishal Sehijpal, for the Appellant; Arnind Gupta, APP and Insp. Gurdev Singh, P.S. Ranjit Nagar, Vijay Kr. Aggarwal, Gurpreet Singh and Rohit Sharma, for the Respondent

Judgement

A.K. Pathak, J.—By this petition Petitioners seek anticipatory bail.

2. Petitioner Nos. 1 and 2 are mother-in-law and jethani respectively of the deceased, who died an unnatural death by hanging after about five years of her marriage. Admittedly deceased has died an unnatural death within seven years of marriage. FIR has been registered on the basis of statement of father of the deceased recorded by Tehsildaar. Learned Counsel for the Petitioners has contended that in the FIR father of the deceased has leveled allegations of demand of dowry and harassment against the husband and not against the Petitioners. Petitioners had neither demanded any dowry nor harassed the deceased during her stay in the matrimonial home.

3. Per contra, learned APP has contended that in the supplementary statement recorded by the Investigating Officer after about five days of the incident, father of deceased has named the Petitioners also as the persons who had demanded dowry from him. It is contended that the mother of deceased had also repeated the same allegations of demand of dowry and harassment in her statement u/s 161 Code of Criminal Procedure Counsel for the complainant has also joined the APP in opposing the anticipatory bail application. It is contended that in dowry

death cases anticipatory bail cannot be granted in view of the judgment rendered by Supreme Court in Samunder Singh Vs. State of Rajasthan and Others, Reliance has also been placed on K.C. Chibber Vs. State, and Balchand Jain Vs. State of Madhya Pradesh, to contend that if the offence is punishable with death or life, anticipatory bail cannot be granted.

4. To rebut this contention learned Counsel for the Petitioner has placed reliance on a recent judgment of Supreme Court titled Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. 2011 (1) JCC 1 to contend that conditions mentioned u/s 437 Code of Criminal Procedure cannot be read into Section 438 Code of Criminal Procedure It is further contended that anticipatory bail can be granted even in the cases attracting punishment of life or death, in case sufficient ground is made out for that. It is further pointed out that in a dowry death case Supreme Court had extended relief of anticipatory bail in M.P. Lohia etc. Vs. State of West Bengal and Another, , thus, it would be fallacious to contend that anticipatory bail cannot be granted in the offence relating to "dowry death" even if a case is made out for grant of anticipatory bail.

5. I have considered the rival contentions of both the parties. In Siddharam Satlingappa's case (supra), Supreme Court has held that no inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. Grant or refusal of anticipatory bail should be taken on facts and circumstances of each case. In M.P. Lohia's case (supra), Supreme Court has extended concession of anticipatory bail u/s 438(2) Code of Criminal Procedure to accused in the facts of the said case. Therefore, it cannot be said that anticipatory bail cannot be granted even if a case is made out for grant of anticipatory bail in a dowry death case.

6. In the present case all the male members i.e. husband, jeth and father-in-law of deceased are in jail. Petitioners are women. They were not named in the FIR as the persons who had demanded dowry and harassed or tortured the deceased when demand was not met. No specific allegation of demand of dowry and harassment had been leveled against them in the FIR which was recorded immediately after the incident. Deceased has left behind one child who is being looked after by the Petitioners. Petitioner No. 2 also has two children. Male members are already in custody. Keeping in mind the totality of circumstances, it is ordered that in case of arrest Petitioners be released on bail, subject to their furnishing personal bond in the sum of Rs. 20,000/- each with one surety each in the like amount to the satisfaction of the IO/SHO concerned. However, Petitioners shall cooperate in the investigation and appear before the Investigating Officer as and when they are called upon to do so.

6. Application is disposed of in the above terms.