

(2016) 04 DEL CK 0093

In the Delhi High Court

Case No : Bail Appln. 352 of 2016 and Crl.M.A. No. 3882 of 2016.

Preeti

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (2016) 5 ADDelhi 162 : (2016) 3 CriCC 68 : (2016) 230 DLT 87 :
(2016) 2 RajdhaniLR 313

Hon'ble Judges : Sunita Gupta, J.

Bench : Single Bench

Advocate : N. Hariharan, Sr. Advocate with Sidharth Singh Yadav and Sahil Paul, Advocates, for the Appellant; Rajesh Mahajan, ASC, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Gupta, J. - Maya Devi and Preeti are the mother-in-law and sister-in-law of deceased Deepa who met an unfortunate death on 07.08.2015. They seek anticipatory bail in case FIR No. 981/15 under Section 498A/304B/34 IPC registered with police station Prashant Vihar.

2. The FIR was registered on the basis of a statement made by Brijesh Yadav, brother of the deceased to the Executive Magistrate.

3. Learned senior advocate for the petitioners submits that deceased Deepa got married to Abhishek Kaushik on 07.11.2011 as per Hindu rites and customs. It was an inter cast love marriage in which no dowry was given nor same was demanded by the applicants or any other family member, as admitted by the complainant in his statement given to the SDM. The complainant had specifically admitted in his statement that there were some petty disputes with the applicants. Therefore, her husband was searching for a separate house for last ten days. Abhishek Kaushik, husband of the deceased was arrested on 24.01.2016 and thereafter he was released on regular bail on 06.02.2016.

Subsequently, a complaint was made wherein also there were no allegations of demand of dowry. It was for the first time when a complaint was made to Commissioner of Police on 02.09.2015 that it was alleged that demand of Rs.10 lacs and two diamond sets was being made. Learned counsel further submits that the statement of mother, brother and sister of the deceased and a maid servant were recorded belatedly. Moreover, as per the statements, demand of Rs.10 lacs and two diamond sets were made on the occasion of birth of the child which at the most is a customary gift. Moreover, question of demanding these items does not arise as the complainant himself was facing financial crisis and he approached the family of the applicants to help him. Out of love and affection, Sh. B.K. Kaushik, father-in-law of the deceased gave a sum of Rs.5lacs to the complainant Brijesh Yadav through RTGS. Prior to that, he had also given a sum of Rs.15 lacs to the cousin of complainant on 27.02.2013 through RTGS. The statements made by the witnesses are afterthought. The petitioners have already joined investigation. They have roots in the society. Maya Devi is working as a teacher in a Government school as such, there is no apprehension of fleeing from justice. They are still ready and willing to join investigation as such, they be granted the benefit of anticipatory bail.

4. Initially, when the bail application was filed and transferred to this Court, Mr. Rajesh Mahajan, learned Additional Standing Counsel appeared for the State, however, on the date of hearing of the bail application, Mr. Mukesh Gupta, Advocate also appeared and placed on record copy of the order vide which he has been appointed as Special Public Prosecutor in the bail application. The same was opposed by Mr. Rajesh Mahajan, Additional Standing Counsel on the ground that he was appointed by the State to contest these bail applications, however, without going into the said controversy, since the bail applications are opposed by both the counsels, as such, they were advised to assist each other.

5. Mr. Rajesh Mahajan, learned Additional Standing counsel submits that although FIR was initially registered under Section 498A/34IPC subsequently, Section 304B IPC was added. For invoking the provisions of Section 304B IPC, it is incumbent upon the prosecution to prove:

- (i) The deceased met with an unnatural death;
- (ii) The unnatural death had taken place within seven years of the marriage;
- (iii) Deceased was subjected to cruelty or harassment on account of demand of dowry;
- (iv) Soon before her death, the deceased was subjected to cruelty/harassment on account of dowry.

Counsel submits that in the instant case all the four essential ingredients are there as there is no dispute that the deceased got married with Abhishek Kaushik on 07.11.2011 and she met an unnatural death on 07.08.2015. As regards the cruelty or harassment to the deceased on account of dowry, although it was

admitted that in the initial complaint made by Brijesh Yadav, he had stated that the in-laws never demanded dowry from his sister but in the subsequent complaint the reasons for this omission was duly explained where it was stated that Abhishek Kaushik is a practicing lawyer in Rohini court. When Deepa was taken to hospital several lawyers from legal fraternity were present in the hospital and they pressurised the complainant not to make a correct statement before the Executive Magistrate. Moreover, under their influence even the local police was not investigating the matter properly, therefore, complainant was compelled to make a complaint to the Commissioner of Police on 02.09.2015 wherein it was specifically stated that the deceased was being harassed for fulfilment of demand of Rs.10 lacs and two diamond sets. Reference was also made to the status report that the investigation was thereafter transferred to DIU/OD on 02.12.2015 and till then even the statement of relatives of the deceased were not recorded. After the investigation was transferred to DIU/OD, the investigating officer recorded the statement of mother, brother and sister of the victim as well as Kusum, maid servant who was sent to the house of the deceased after the birth of the child to look after the child as well as the deceased expenses of which were borne by the mother of the deceased. Counsels submits that in the statements all the witnesses have clearly stated that the deceased was being constantly harassed for bringing Rs.10 lacs and two diamond sets and even on the fateful day, she had talked to her mother as well as sister and reiterated these demands. Learned Additional Public Prosecutor further refers to the statement of the mother, brother and sister of the deceased recorded under Section 161 Cr.P.C where there are allegations of harassment to the deceased and demand of Rs.10 lacs and two diamond sets. Mother of the deceased further alleged that her statement was not recorded by the police and SDM since on 08.08.2015 some of the advocates and one retired police officer kept pressurising them. She further stated that on the date of incident, she had talked to her daughter and tried to pacify her. Besides that, statement of one maid Smt. Kusum was recorded who worked to take care of the child of the victim for about two months in the in-laws house of the deceased. She also stated that deceased was being regularly tortured by her mother-in-law, sister-in-law and husband for demand of dowry. She used to describe these things to the victim's mother on her mobile. As per the status report, the analysis of CDR of deceased Deepa shows that soon before her death she had talked to her mother and sister and the CDR details confirms talks of Smt. Kusum with the mother of the deceased. Counsel further submits that the relatives of the deceased alleged that they are being threatened by the relatives of the accused persons therefore FIR No.563/15 at police station Maurya Enclave was registered. A complaint under Section 156(3) Cr.P.C was also made by the complainant before the learned Metropolitan Magistrate Rohini in this regard. Due to security reasons, the mother and brother of the deceased had shifted to Gurgaon where their statements were recorded by the investigating officer of the case after transfer of investigation to DIU. Learned ASC further submits that during investigation, it has been found that twice abortion/termination of pregnancy was got done from

Kalra Hospital, Kirti Nagar, Delhi. Cash withdrawal of Rs.4 lacs on 03.07.2014 and Rs.5 lacs on 21.10.2014 as alleged to have been paid by cash to the father-in-law and husband of the victim is found in the account statements of complainant. In addition to it, Rs.2 lacs RTGS transaction on 05.07.2014 is also found in favour of victim after her marriage from the account of the complainant. It is further stated that the deceased had found a CD allegedly an obscene CD of sister-in-law which was one of the cause of quarrel however the mobile phone of the victim, her computer, CD and money could not be recovered. Although the petitioners were granted interim protection but they are not cooperating in the investigation. Local enquiry also revealed that there used to be abusive arguments among family members prior to the incident specially between the petitioners on the one side and victim on another side. As such, it is submitted that the investigation is at initial stage, the allegations are serious in nature, viscera report is yet to be received; recovery of mobile phone of deceased, laptop, CD etc. is yet to be effected. Possibility of tampering with evidence and influencing independent witnesses cannot be ruled out in view of the past complaints of the family members of the deceased as such, it is submitted that the petitioners are not entitled to be granted benefit of anticipatory bail. Reliance was placed on *Sangita v. State NCT of Delhi*, Bail Appl.No.1601/2011 and *Lavesh v. State NCT of Delhi*, Bail Appl.No.1602/2011 which was also a case under Section 498A/304B IPC and the petitioners were the real sister and brother of husband of deceased. Application for grant of anticipatory bail was filed by them which was dismissed by this Court on 05.12.2011 by placing reliance on *Samunder Singh v. State of Rajasthan and Ors.*, (1987) 1 SCC 466. SLP was preferred against that order which was also dismissed vide order dated 31.08.2012 by observing that while considering such a request for grant of anticipatory bail, the Court has to take into consideration the nature and gravity of the accusations, antecedents, possibility of the applicant to flee from justice etc. Further, normally, the court should not exercise its discretion to grant anticipatory bail in disregard and magnitude and seriousness of the matter, the matter regarding unnatural death of the daughter-in-law at the house of her in-laws is still under investigation and the appropriate course to adopt was to allow the Magistrate concerned to deal with the same on the basis of material before the Court.

6. *Samunder Singh* (supra) was an appeal and the same was dismissed with the following observations:-

"The widespread belief that dowry deaths are even now treated with some casualness at all levels seems to be well grounded. The High Court has granted anticipatory bail in such a matter. We are of the opinion that the High Court should not have exercised its jurisdiction to release the accused on anticipatory bail in disregard of the magnitude and seriousness of the matter. The matter regarding the unnatural death of the daughter-in-law at the house of her father-in-law was still under investigation and the appropriate course to adopt was to allow the concerned magistrate to deal with the same on the basis of the

material before the court at the point of time of their arrest in case they were arrested. It was neither prudent nor proper for the High Court to have granted anticipatory bail which order was very likely to occasion prejudice by its very nature and timing. We therefore consider it essential to sound a serious note of caution for future. The High Court is under no compulsion to exercise its jurisdiction to grant anticipatory bail in a matter of this nature. So far as the present matter is concerned, since it has become infructuous, we do not propose to pass any order. Subject to these observations, the appeal is dismissed."

7. Reliance was also placed on *Alamgir Sani v. State of Assam*, (2002) 10 SCC 277 where also the initial complaint was lacking in certain particulars regarding demand of dowry and it was submitted that the evidence of demand for dowry could not be believed at all. Repelling the contention, Hon'ble Supreme Court observed that "human nature is very complex. Different persons react differently under pressure or in times of sudden bereavement or grief. The shock suffered by a parent having seen his daughter dead in an unnatural manner can in some cases prevent immediate outpouring of reasons. Each case would have to be tested on its own facts and no hard and fast rule can be laid down in this behalf.

8. Mr. Mukesh Gupta, learned Special Public Prosecutor supported the submissions of learned Additional Standing Counsel and opposed the bail application on the ground that custodial interrogation of the petitioners is required for recovery of laptop, mobile, CD etc. Moreover, reference was made to the conduct of the petitioners for submitting that due to threats administered by the relatives of the petitioners, mother of the deceased was compelled to shift to Gurgaon.

9. Learned Senior advocate for the complainant adopted the arguments raised by learned Additional Standing Counsel as well as learned Special Public Prosecutor for the State. In addition, it was submitted that at the initial juncture a wrong information was given to the mother of the deceased by Abhishek Kaushik, husband of the deceased by stating that Deepa has suffered a heart attack. When mother of the deceased informed him that she is coming to the house then she was informed that she is being taken to Bhagwati Hospital. When the mother of the deceased along with younger brother and other relatives reached the hospital, they noticed some spots on the throat of Deepa. On enquiry Abhishek Kaushik informed that she has committed suicide. It was further submitted that due to the influence exerted by some advocates, friends of Abhishek Kaushik, the complainant could not give the complete and correct narration of facts before the Executive Magistrate under their pressure. Even the local police did not investigated the matter properly. It was only after the investigation was transferred to DIU that the statement of some of the relatives and an independent witness was recorded which reflects the circumstances under which the unfortunate incident has taken place within four and a half years of her marriage. Reliance was placed on *Samunder Singh v. State of Rajasthan*, (1987) 1 SCC 466; *State v. Jaspal Singh Gill*, (1984) 3 SCC 555; *Gajanand Agarwal v.*

State of Orissa, 2007 (14) SCC 537; Central Bureau of Investigation v. V. Vijay Sai Reddy, 2013 (7) Scale 15; Nassirudin v. State of NCT, 2014 (13) SCC 579; Ramesh Arjan Thadani v. State of Maharashtra, 1995 CRLJ 2782 and Sanjay Bahl v. State of U.P., 1995 CrL LJ 1658.

10. Rebutting the submissions of learned counsels for the complainant as well as the learned Public Prosecutor for the State, learned senior advocate for the petitioners submits that the mother of the deceased had shifted to Gurgaon because they were allotted a flat by Haryana Urban Development Authority in the year 1987 and after the house was constructed they shifted to this house and not because of any threat, as alleged by them. Moreover, in order to bring the case within the ingredient of "soon before death" as required under Section 304B IPC, the alleged demand of Rs.10 lacs and two diamond jewellery was set up on the occasion of birth of son of the deceased who was born in January and the customary function took place in March, 2015 but the alleged demand is being stretched to August, 2015.

11. I have carefully considered the submissions made by learned counsels for the parties.

12. Needless to say, the allegations levelled against the petitioners are serious in nature. While dealing with application for grant of anticipatory bail, among other circumstances, the following factors have also to be considered before granting bail, they are:

(i) The nature of accusations and the severity of punishment in case of conviction and nature of supporting evidence;

(ii) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant;

(iii) Prima facie satisfaction of the Court in support of the charge.

13. The deceased has committed suicide within four and a half years from the date of her marriage. It is true that in the initial complaint made by Brijesh Yadav, brother of the deceased, to the Executive Magistrate it was alleged that there was no demand of dowry, however, the subsequent complaints made by him reflect the circumstances under which such a statement was made before the Executive Magistrate. Moreover, the local police had not even recorded the statement of the near and close relatives of the deceased. It was only subsequently a complaint was made by Brijesh Yadav for inaction on the part of the police and subsequently another complaint was made stating therein that the deceased was subjected to harassment on account of constant demand of Rs.10 lacs and two diamond jewellery sets. It was only after the investigation was transferred to DIU that the statement of mother, another brother, sister and maid of the deceased were recorded which unfolded the demand of Rs.10 lacs and two diamond sets. All this material collected during investigation will be subject to scrutiny at the trial by the Sessions Judge at the appropriate stage. As per the

status report, there was some money transaction which reflected payment of Rs.4 lacs, 5 lacs and 2 lacs by the complainant whereas according to petitioners a sum of Rs.5 lac and 15 lac was given by father-in-law of deceased to her brother and cousin. All these transactions are required to be investigated. Moreover, although the petitioners have joined investigation pursuant to the interim protection granted to them however it is alleged that they are not cooperating with the investigation. The CD alleged to be containing obscene pictures of Preeti, video clip, mobile and laptop of the deceased etc. are yet to be recovered. Despite the fact that Abhishek Kaushik was arrested and his police custody remand was taken but these things could not be recovered. Moreover, there are allegations of threats being administered to the complainant and his family members which resulted in registration of FIR No. 563/2015 under Section 506 IPC at police station Maurya Enclave and it is alleged that because of security reason, the complainant and his family members were compelled to shift Gurgaon. At the stage of bail, the Court is not to threadbare analyse the evidence furnished by the prosecution. That exercise will only be done after the witnesses have been examined in the trial court.

14. For the reasons mentioned above and since the case is still at the threshold, I do not think that it is a case where benefit of anticipatory bail deserves to be extended to the petitioners. Accordingly, the applications are dismissed. The interim protection granted to the petitioners vide order dated 17.02.2016 and extended thereafter stands vacated.

15. It is clarified that expression of any opinion may not be treated as an expression on merits of the case.