

(2018) 11 DEL CK 0111

In the Delhi High Court

Case No : Bail Application No.2652 Of 2018

R. S. Singhvi & Anr

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-11-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304B
Code of Criminal Procedure, 1973 — Section 161

Citation : (2018) 11 DEL CK 0111

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Abhishek Manu Singhvi, Sidharth Luthra, Siddharth Aggarwal, Aditya Singla, Sameer Chaudhary, Satyam Thareja, Pallav Gupta, Rahul Mehra, Meenakshi Chauhan, Vishal Gosain, Rudhrani Tyagi, Megha Bahl

Final Decision : Disposed Off

Judgement

Mukta Gupta, J

1. By this petition, petitioners seek bail in case FIR No.185/2018 under Section 304B/34 IPC registered at PS Hauz Khas, Delhi. Petitioners are the

father-in-law and mother-in-law of the unfortunate deceased Anissia Batra who purportedly committed suicide on 13th July, 2018 at about 4.15 PM.

As per the MLC Anissia was brought to the Max Healthcare Hospital at 4.35 PM on 13th July, 2018 by her husband with the history of

unconsciousness at the time of arrival, whereafter Anissia was declared dead at 5.50 PM.

2. On the complaint of Smt. Nillum Batra, mother of Anissia Batra above noted FIR was registered. In her statement recorded by the SDM, Hauz

Khas, Nillum Batra stated that she had married her daughter Anissia Batra on 23rd February, 2016 with Mayank Singhvi, son of Rajinder Singh

Singhvi resident of N-116, Panchsheel Park at Delhi Cantt. After a week of marriage the couple went for honeymoon to Dubai where on the second day itself in the hotel lobby Mayank assaulted Anissia and she had marks on her body. When Anissia messaged her, Nillum Batra advised her for her safety to shift to another room and on the next day she left the hotel and went to her female friend and from there she came to India. The complainant advised her daughter to talk to her parents-in-law, that is, the petitioners herein. During the course of discussion, the responsibility of assault was put on Anissia by the petitioners stating that the incident happened due to her instigation. Her husband was assured that no such incident will take place again and Mayank assured that he will not drink in future which promise he broke within a week when he assaulted and abused Anissia. On 14th April, 2018 they stayed in Delhi for one month when Mayank pulled the hand of her daughter and tried to remove her out of the house, when the complainant stopped him. Due to the aggressive behavior of Mayank her daughter used to remain sad for which they came back to Delhi on 5th June, 2018. On 6th June, 2018 again quarrel took place between the couple and her daughter was sitting silently on the bed when Mayank called his parents who were at that time in London and his parents were instigating Mayank after which Mayank went mad with anger. When she was taking her daughter out of the room Mayank hit her and her daughter which resulted in the breaking of the bracelet of Mayank. The next day, petitioners came back from London and in the evening came to the house of Mayank when they misbehaved with the complainant and her daughter and asked the complainant to go out of the house within two days. Complainant called her husband who came on 9th June, 2018. Police also used to come to their house often as there used to be quarrels and for this reason her son also used to come to Delhi. Shri Ganpatji assured that this incident will not take place in future and they could go back to Chandigarh. It is then the complainant's family got to know that Mayank was already a divorcee and needed mental help. Complainant along with her husband and son came back to Chandigarh on 29th June, 2018. Mayank used to demand money from her daughter. On 13th July, 2018 at 12.11 noon she messaged her daughter to know her condition but received no reply. Before that at about 11.40 AM her daughter sent a message that Mayank was at home and they were in separate rooms. Thereafter Mayank called her twice at 2.13 PM and

2.24 PM and sent abusive messages. Thereafter the complainant's husband told her that their daughter has jumped from the third floor and has

been shifted to the hospital. They received the message of the death of their daughter from Shri Ganpati ji. The complainant held Mayank and his

parents, the petitioners herein, responsible for the incident with her daughter and sought action.

3. Supplementary statement of Major General Ropinder Singh Batra, husband of the complainant was recorded on 14th July, 2018 wherein he stated

that he had spoken to his daughter on 11th July, 2018 when she was crying and told him that Mayank had hacked her email ID and phone and was

keeping a watch on her activities specifically on the conversations with the lawyer. He further stated that Mayank demanded money from his

daughter and on refusal he used to beat her. The allegations against the petitioners are that they used to instigate Mayank, never stopped him from his

misbehavior and stated that till Mayank's demand was not fulfilled assault would take place. He also stated that these people wanted to take

money after the sale of the flat of the deceased at Vasant Kunj and when she did not give the money, relations became sour.

4. Before proceeding further it would be relevant to note the rival contentions of learned counsels for the parties.

5. Learned Senior Counsel for the petitioners submits that both the petitioners are senior citizens and petitioner No.2 has been suffering from

carcinoma of the left breast for which she has undergone a surgery on 29th January, 2018. She uses prosthetic and needs regular medical treatment

and attention. She is also suffering from osteopenia in the lumbar spine with increased fracture and degeneration in the vertebrae and mild scoliosis in

the dorsal spine. Even petitioner No.1 is a patient of thyroid and asthma and on regular medication. Learned counsel further submits that there is no

allegation against the petitioners for demand of dowry in any of the communication/documents prior to the death. Admittedly there is no monetary

transaction in favour of either of the petitioners. The deceased wrote a detailed e-mail to her lawyer on 23rd June, 2018 wherein there is no mention

of any demand of dowry. Even in the whatsapp messages exchanged between the various parties including two mothers there are no allegations that

the petitioners ever demanded dowry. Even in the complaint dated 27th June, 2018 by the father to the SHO, PS Hauz Khas the allegations at best are

that her husband and in-laws have asked her to vacate her husband's house and he apprehends safety of her life which could be in danger.

Though there are allegations of violence but the same are only against Mayank and not against the petitioners. Further the petitioners had purchased a

new flat and shifted to their new house, permitting Mayank and Anissia to reside in their old house. Petitioners were admittedly living separately from

Mayank and Anissia. For some time the couple also resided on rent in Safdarjung Development Area and costly gifts were given to Anissia by their

son besides a pocket money of approximately Rs.30-35,000/-per month as is reflected in the bank statement. As per the viscera report ethyl alcohol

content in the blood of deceased was 298.00 mg/100 ml of blood which according to a publication of AIIMS results in amnesia for the experience and

blackout. Even as per the crime scene report/FSL team possibility of suicidal fall could not be ruled out. Statements of independent witnesses also

show that the petitioners were trying to mediate and help the relations settle down between Mayank and Anissia. Admittedly after 11th June, 2018

petitioners have had no interaction with the deceased or her parents and hence there could be no abetment to suicide. Whatsapp conversation

between Anissia and her parents clearly show that Anissia had made up her mind to wind up and was only buying time and creating evidence. Mother

of Anissia has admitted that her daughter was under depression and in need of medication. Learned counsel further points out that in the FIR and the

subsequent statements of the father of the deceased dated 14th July, 2018, there is no allegation against the petitioners. However, to build a case for

offence punishable under Section 304B IPC against the petitioners, detailed supplementary statements were recorded by the Investigating Officer on

11th September, 2018 before anticipatory bail application was to be heard by this Court on 17th September, 2018. The supplementary statements have

been ante-dated to 11th August, 2018. The same shows that the investigating agency is acting in a mala fide manner. Selective whatsapp messages

are being shown to this Court and messages which exonerate the petitioners are not being placed on record. Admittedly the money received from the

Vasant Kunj house of Anissia had been transferred to the accounts of her parents and not to Mayank or the petitioners. This money was admittedly

transferred to the accounts of the parents of the deceased prior to 23rd June, 2018 when email was sent to the learned counsel for the deceased and

there is no allegation in the email that the petitioners or their son was demanding the sale proceeds of the Vasant Kunj flat or harassing for non-payment.

6. Learned counsel for the petitioners further contends that the impugned order dated 1st November, 2018 rejecting the bail application of the petitioners suffers from gross illegality as it notes repeatedly that charge sheet qua the petitioners is required to be filed whereas the fact is that charge sheet and supplementary charge sheet against the petitioners had already been filed and they had already been summoned. In view of the settled principles of law that there is no possibility of the petitioners fleeing away from justice nor interfering in the evidence or documents and have cooperated during the course of investigation and that there has been no abetment to suicide by any of their action and due to their old age and their sufferings petitioners be released on bail. Reliance is placed on the decision reported as 2018 (3) SCC 22 Dataram Singh vs. State of Uttar Pradesh and Anr.

7. Learned Standing Counsel for the State on the other hand contends that immediately after the marriage when the couple went to honeymoon

Anissia was beaten by Mayank who returned back to India. Petitioners instead of rebuking their son blamed Anissia for the outburst of their son. On

13th July, 2016 again Mayank assaulted Anissia when the petitioners were called at Safdarjung Development Area and they lashed out Anissia.

Around July, 2016 petitioners demanded Rs.2 lakhs couched in the manner of financial assistance to Mayank which demand was refuted in February,

2017. On 12th April, 2017 Mayank again assaulted Anissia as his demands had not been met and pressurized her to sell the flat at Vasant Kunj.

Learned Standing Counsel for the State has read out the various whatsapp chats and also relies upon the prior complaint of the father dated 27th June,

2018 to SHO, PS Hauz Khas. He further states that in the statement dated 14th July, 2018 father of the deceased had clarified that the petitioners

abated the physical violence by their son till the demands were not met. According to the petitioners till Rs.1.2 crores were not handed over to

Mayank, the deceased was required to face the consequences. Charge sheet filed on 12th October, 2018 was against all the three accused including

the petitioners however, substantial investigations qua the petitioners could not

be conducted by that time as they were not arrested. Further the supplementary charge sheet dated 31st October, 2018 only related to the report of viscera and final cause of death. He relies upon the decision reported as 2015 (6) SCC 477 Rajinder Singh vs. State of Punjab to say that continuous course of harassment also amounts, to abetment and that soon before the death is a relative term depending on the facts of the case.

8. Various sets of evidence with the investigating agency against the petitioners are in the form of the statements of the family members of the deceased, whatsapp messages, facebook accounts, email addressed by the deceased to the learned counsel, previous complaints and statements of the two independent witnesses namely Naveen Kumar, construction worker who saw the deceased falling and Raman Ahuja, a neighbourer.

9. At the outset it would be appropriate to note the statement of Naveen Kumar coupled with the post-mortem report which has to be seen in the light of the report of viscera now received as per which ethyl alcohol contained in the blood of deceased was 298.00 mg/100 ml of blood.

10. Naveen Kumar in his statement under Section 161 Cr.P.C. stated that he was doing the work of welding behind N-114, Panchsheel Park. On 13th July, 2018 at about 4.00-4.30 PM while he was doing the welding work on the first floor of N-114, Panchsheel Park with his friend Raj Kumar it was raining and he saw that in the neighbouring building No.N-116, Panchsheel Park on the roof one girl was holding the side railing from outside and standing with her mobile phone in her hand. He thought that the girl was taking a selfie. He resumed his work. After two-three minutes when he again looked at the roof he saw the girl hanging outside the railing. He told this to his co-worker Raj Kumar and in the meantime the girl left her hand and fell down. The girl first fell on the wall of N-114, Panchsheel Park with her backside down and thereafter fell on the face down. Thereafter the girl was taken to Max Hospital.

11. The second important witness of the case is Dr. Aman M. Hingorani, Advocate whose statement was recorded by the police on 19th July, 2018 who stated that in early June around 9th June, 2018 he received a call from Ms. Anissia giving reference of one Ms. Bhawna and sought appointment to discuss her matrimonial discord. She was highly agitated at that point of time as she was asked to vacate her matrimonial home at N-116,

Panchsheel Park by her husband. Anissia met him in his chamber on Monday 11th June, 2018 on which he instructed Anissia to prepare and file a

domestic violence complaint against her husband and in-laws and also to claim maintenance.

He asked her to email the detailed statement of her case. Ms. Anissia and her parents met him at his chamber in the week of 18th June, 2018. Anissia

brought few handwritten notes and had her documents on her phone. He again asked her to send an email of the facts chronologically and hand over

hard copy of all her documents. On 23rd June, 2018 Anissia emailed her statement to which he replied on 24th June, 2018 stating that he was going

through her statement and would prepare the case. He sent the prescribed format of Financial Affidavit to her by email and asked her to leave it in the

chamber by Friday 29th June, 2018 supported by documents. Since he was to travel from 25th June to 30th June, he asked Anissia if she had any

query she could speak to Ms. Priya Hingorani, Advocate. In the meantime, Anissia emailed to his junior with instructions to convey the statement into

domestic violence format and his junior did so and forwarded the same to Dr. Hingorani. Ms. Anissia met Ms. Priya Hingorani on or around 27th June,

2018. However, she left no documents or the complete financial affidavit. On 12th July, 2018, he received a call from Ms. Anissia essentially stating

that her husband had hacked into her email and knew that she was taking legal advice from him. She suggested that in future they should not

communicate through email and that she would have to visit a cyber café to take hard copies. Thereafter Ms. Anissia was due to fly on Saturday

on 14th July, 2018 till 17th July, 2018 however, on 13th July, 2018 at 4.12 PM he received a message stating "I am going to kill my self today bcoz

Mayank has driven me to it. I would like you to plz fight for me after I'm gone." After much efforts he was able to contact Bhawna and

forwarded the message of Anissia with request to share it with the SDM and on 19th July, 2018 the Investigating Officer collected all the emails of

Ms. Anissia, whatsapp texts along with the statement.

12. Email to Dr. Aman Hingorani, Advocate is dated 23rd June, 2018 which is a part of the charge sheet. In the said email the crux of the allegations

are as in the FIR noted above. Thus in the last communication in the narration by the deceased to her counsel there are allegations of assault,

misbehavior by Mayank but there is no allegation of demand of dowry. Though the flat of Vasant Kunj as purportedly stated to be sold on the desires

of the petitioners and Mayank and the money sought, however, in the communication to the lawyer there is no such averment, which was after the flat

at Vasant Kunj was sold on 12th June, 2018 money whereof has been admittedly transferred to the accounts of mother and father of the deceased.

13. When the anticipatory bail application of the petitioners came up before this Court a bunch of documents were handed over by learned Standing

Counsel for the State. The said documents contained supplementary statements of the parents of the deceased recorded under Section 161 Cr.P.C. on

11th September, 2018. In the said statements, parents of the deceased have leveled allegations for demand of money to the tune of Rs.10 lakhs and

later Rs.1.2 crores from the sale of flat.

14. Today, learned counsel for the petitioners has pointed out that though the statements were purportedly recorded on 11th September, 2018,

however, when copies of the said supplementary statements were furnished to the petitioners with the charge sheet, the date was changed to 11th

August, 2018. On a query put by this Court to the learned Standing Counsel for the State, he has brought to the notice of this Court the case diary

dated 17th September, 2018 wherein the Investigating Officer has noted that statements of Ropinder Batra, Nillum Batra and Karan Batra were

actually recorded on 11th August, 2018 but the date was wrongly recorded as 11th September, 2018, thus the dates are required to be corrected.

According to the Investigating Officer the dates have been changed to 11th August, 2018 for this reason. Explanation rendered is prima facie not

plausible however, this Court is not required to go into the same at this stage. Needless to note, it would be for the learned Trial Court to look into the

date on which these supplementary statements under Section 161 Cr.P.C. were recorded. However, as noted above in the last narration in the own

words and language of the deceased to the learned counsel there is no allegation of demand of dowry much less that the petitioners were demanding

Rs.1.2 crores received from sale of the Vasant Kunj flat though admittedly when the email was sent to the learned counsel the flat at Vasant Kunj

had been sold.

15. Both sides have relied upon whatsapp messages, interse the deceased, her

family members, petitioner No. 2 and her son besides friends.

However, when this Court posed a question to learned Standing Counsel for the State as to when the mobile phones were seized and the whatsapp

chats retrieved, learned Standing Counsel for the State on instructions submitted that mobile phones of Anissia and Mayank were seized on 14th July,

2018 whereas that of Nillum Batra and Ropinder Batra were seized on 18th August, 2018. As per the Investigating Officer he did not download any

chats and after seizure sent the four mobile phones to FSL. Case of the Investigating Officer is that whatsapp chats which form part of the charge

sheet and also which were handed over to this Court at the time of hearing of the arguments were seized from the mother and friend of the deceased.

16. On a query put by this Court as to the seizure memos in this regard Investigating Officer has been able to show only one seizure memo dated 11th

August, 2018 relating to 21 transcription pages of whatsapp messages between Nillum Batra and Sushma Singhvi and Mayank Singhvi and Anissia

Batra, besides five pages of whatsapp transcription between Ropinder Batra and Anissia Batra. Though learned Standing Counsel for the State

contends that with this bail application certain whatsapp messages have been placed which are not part of the charge sheet, however as noted above

selective whatsapp messages are being placed before the Court even by the prosecution, thus it would not be appropriate to form any opinion on the

basis of selective messages until a proper report and transcripts are received from the FSL from the phones seized.

17. Learned counsel for the petitioners have also taken objection to the manner in which Investigating Officer did not report to the Metropolitan

Magistrate till 20th August, 2018 with regard to the preserving of the mobile phones transcripts for which an application was filed on 20th July, 2018

however, at this stage, this Court does not find it appropriate to pass any observations thereon and it would be a matter to be looked into before the

learned Trial Court.

18. After the dismissal of the anticipatory bail application of the petitioners charge sheet and supplementary charge sheet have already been filed also

against the petitioners. Learned Standing Counsel for the State submits that further investigation is going on and further charge sheet would be filed

but as admitted by learned Standing Counsel for State one day police remand of

the petitioners was sought which was granted and no further police custody is required.

19. Considering the facts noted above and that in the detailed narration of the deceased to her lawyer the allegations against the petitioners are of

instigating their son and not primarily of any demand of dowry, the fact that the petitioners have been subjected to custodial interrogation and

considering the medical condition of petitioner No.2 who though has been assigned a greater role as compared to petitioner No.1, this Court deems it

fit to grant bail to the petitioners. It is, therefore, directed that the petitioners be released on bail on their furnishing a personal bond in the sum of

Rs.50,000/-each with two surety bonds of the like amount each to the satisfaction of the learned Trial Court, further subject to the condition that the

petitioners will not leave the country without prior permission of the learned Trial Court and in case of change of residential address the same will be

intimated to the court concerned.

20. Petition is disposed of.

21. Case diaries be returned to the Investigating Officer.

22. Order dasti.