

(2016) 01 DEL CK 0272

In the Delhi High Court

Case No : Bail Application No. 79 of 2016, Crl. M.A. No. 624 of 2016, Bail Application No. 80 of 2016 and Crl. M.A. No. 625 of 2016

Raj Bala and Others

APPELLANT

Vs

State of NCT Delhi

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Penal Code, 1860 (IPC) — Section 306, Section 314, Section 323, Section 34, Section 406, Section 498A, Section 506

Citation : (2016) 1 JCC 452 : (2016) 5 RCRCriminal 598

Hon'ble Judges : Siddharth Mridul, J.

Bench : Single Bench

Advocate : Lal Singh Thakur, Sudhir Tewatia and Rakesh Chahar, Advocates, for the Appellant; M.S. Oberoi, APP, Ghan Shyam, Inspector and Vinok Kumar, ASI, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—1. The present bail applications under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking pre-arrest bail in FIR No. 620/2015, under Sections 306/506/34 IPC registered at Police Station-North Rohini, Delhi have been instituted by the mother-in-law and husband of the deceased- Ritu, who died an unnatural death on 9th February, 2014. Learned counsel appearing on behalf of the applicants would urge that they have been falsely implicated and that the allegations levelled against them are an after-thought and clearly manipulated.

2. Learned counsel invites my attention to the following circumstances in support of the afore-stated submissions:--

"(a) that Ritu did not leave behind a suicide note;

(b) that the alleged threats which resulted in the victim taking the drastic step were admittedly made by the applicants three-four weeks prior to the date of the

alleged incident;

(c) that the threats to kill Ritu if she did not withdraw the cases instituted by her against the applicants herein, which were not withdrawn, cannot be considered to be abetment to suicide;

(d) that the applicants were living separately from Ritu; and

(e) that the applicants have no criminal antecedents."

3. In view of the foregoing, it is strenuously urged by learned counsel appearing on behalf of the applicants that the custodial interrogation of the applicants is not warranted in the facts and circumstances of the case and that the applicants, if released on pre-arrest bail shall join investigation and cooperate with the police.

4. On the other hand, Mr. M.S. Oberoi, learned APP appearing on behalf of the State would urge that the viscera report qua Ritu is yet to be received from FSL and that the investigations are at an initial stage. Mr. Oberoi would further urge that the applicants are charged with serious offences and grave allegations have been levelled against them, which would in the event of conviction invite a maximum of ten years imprisonment and that the conduct of the applicants from the year 2010 as evidenced by the FIRs registered against them by Ritu and the circumstance that the applicants are absconding and have steadfastly refused to join investigation despite the issuance of non-bailable warrants, disentitles them from grant of pre-arrest bail.

5. A perusal of the subject FIR, which came to be registered on a direction issued by the concerned Magistrate, reveals that Ritu died in suspicious circumstance on the 9th of February, 2014. It is further alleged that although Ritu and her husband were married on 24th January, 2005 with great pomp and show and dowry had been given at that time to the applicants by the family of Ritu way beyond their means and capacity, the applicants continuously tortured Ritu during her lifetime for more and more dowry.

6. It is also alleged in the subject FIR that the applicant- Pawan Kumar in Bail Application No. 80/2016, who is the husband of the deceased Ritu, tried to remarry during the lifetime of Ritu. The FIR further alleges that Ritu was forced to live separately from the applicants along with her minor daughter (Preesha) in order to escape the cruelty, torture and harassment, however, to no avail. A number of cases/FIRs were registered by Ritu from the year 2010 onwards against the applicants.

7. It is lastly alleged in the subject FIR that three-four weeks before Ritu's unnatural death, the applicants suddenly came to her house and pressured her to withdraw all her cases and threatened to kill her if she did not comply with their demands. Ritu is alleged to have confided in her mother that the applicants stated "kal mar ya aaj lekin case to wappis lene hi padenge or main doosari shadi bhi jarror karoonga, agar tumne case vapas nehi liya to tumhein jine nehi doonga. "

8. The status report filed on behalf of the Station House Officer. P.S. North Rohini, Delhi inter alia reads as follows:--

"That, due to repetitive cruelty and harassment to his daughter, complainant was forced to purchase a house for his daughter at Sec-7, Rohini so that she could live peacefully but his daughter's husband accused Pawan Kumar did not improve his behaviour and continued torturing his daughter. In this regard, a case vide FIR No. 65/13 dated 20.03.2013 u/s. 323/314/34 IPC at P.S.-Dwarka, Delhi and FIR No. 195/13 dated 14.06.2013 u/s. 498A/406 IPC at P.S.-Rani Bagh, Delhi were registered against both the accused persons.

That, it is further alleged that both accused persons came to his house and pressurized his daughter to withdraw the cases registered against them. Due to torture/pressure the daughter of the complainant namely Ritu hanged herself on 09.02.2014.

That, during the course of investigation, the search of accused persons Pawan Kumar and his mother Smt. Raj Bala made but both accused persons are absconding and evading their arrest. On 04.01.2016, NBWs of accused persons have been obtained but they are evading their arrest and not joining the investigation.

That, as per the allegation the petitioner accused persons are continuously threatening the family of complainant to face the dire consequences if case is not withdrawn. The allegations are serious in nature and accused persons are economically sound and can hamper the witness and tamper the evidences. There are high chances of jumping bail if granted. Custodial interrogation is required to unleash the chain of incidence.

That, the anticipatory bail application of petitioner accused was dismissed by Hon"ble ASJ Sh. Digvinay Singh vide orders dated 15.12.2015."

9. In a nutshell, it is the assertion of the SHO, P.S. North Rohini, Delhi that despite having been asked to join investigation, the applicants are absconding and have evaded their arrest. Non-bailable warrants against the applicants have been obtained on 4th January, 2016, however, despite that the applicants have steadfastly refused to join investigation. It is also an assertion on behalf of the SHO that the applicants are continuously threatening the family of Ritu with dire consequences if the subject FIR is not withdrawn.

10. There is gainsaying the fact that a person approaching the Court for pre-arrest bail is entitled to the same unless the Court is of the view that they shall not be available to stand trial or that they shall threaten witnesses or otherwise tamper with the evidence.

11. In the present case, none of the factors as enumerated hereinabove for grant of pre-arrest bail are available to the applicants, inasmuch as, they have steadfastly refused to join investigation and have allegedly threatened the complainant with dire consequences.

12. Furthermore, the conduct of the applicants since the year 2010 as is evidenced from the conspectus of cases/FIRs instituted against them by the deceased Ritu disentitles them from the grant of pre-arrest bail.

13. It is trite to state that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. [Ref: State represented by CBI v. Anil Sharma reported as 1997 Criminal Law Journal 4417]

14. Decisions canvassed on behalf of the applicants namely, Sarla Devi v. State of NCT of Delhi reported as , 221 (2015) DLT 779 and Hari Gopal Wadhwa & Anr. v. State reported as , 143 2007 (4) JCC 2644: (2007) DLT 210, do not come to their aid, inasmuch as, in the former case, the deceased victim had not made any statements against her husband qua demand for dowry or threat to life prior to dying an unnatural death and secondly, the husband of the deceased victim was already in custody; and the latter is a case relating to grant of regular bail.

15. In the present case, the charges against the applicants are grave: there is palpable danger of applicants absconding or fleeing, if granted pre-arrest bail; and there is a reasonable apprehension of the witnesses being threatened.

16. In this behalf, it is observed that the investigations are at an initial stage and the report of the FSL qua the unnatural death of Ritu is still awaited.

17. I agree with the observations made by the learned Sessions Judge to the effect that custodial interrogation is indeed required in the present case.

18. In view of the above, the present bail applications are dismissed. It is however made clear that the observations made in the present order are for the limited purpose of deciding the bail applications and shall not be construed as a final expression of opinion on the merits of the case.