

(2000) 06 DEL CK 0001

In the Delhi High Court

Case No : Criminal M (M) No. 1419 of 2000

Suhaib Ilyasi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-06-2000

Acts Referred:

Citation : (2000) CriLJ 4766 : (2000) 2 DMC 340

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Mr. Rajinder Singh, Pt. R.K. Naseem, Mr. K.K. Manan and Mr. Tariq Siddiqui, for the Appellant; Mr. R.K. Anand, Mr. K.C. Mittal and Mr. Pawan Bahl, for the Respondent

Judgement

Dalveer Bhandari, J.—This petition is directed against the order of the learned Additional Sessions Judge dated 26.4.2000 by which the petitioner, Suhaib Ilyasi's bail application was rejected, on the ground that the case is still under investigation and some more relevant facts remain to be investigated.

2. Learned counsel appearing for the parties have argued this bail petition at length, Since this petition is at the stage of bail and the trial of this case is yet to begin, Therefore, I would refrain from giving my findings on various submissions made before me. My endeavor in this order would just be to note the basic arguments of the learned counsel for the parties. I would not like to analyze the submissions and give my findings, as any findings on these issues may directly or indirectly influence the trial of this case.

3. The brief facts which are absolutely necessary to decide this bail petition are recapitulated as under.

4. Mrs. Anju Ilyasi was married to the petitioner on 18.11.1993 in London. Both of them came to India some time in October 1994 and in India they stayed with the parents of Mrs. Anju Ilyasi until the first week of December 1999. hereafter, the couple shifted to their own apartment at B-13 IFS Apartments, Mayur Vihar,

Phase I, Delhi.

5. It is alleged that around the midnight of 10.1.2000 Mrs. Anju Ilyasi committed suicide at her apartment referred to above. Since the deceased had died an unnatural death, within 7 years of her marriage, so inquest proceedings u/s 176 Cr.P.C. were initiated by the Sub Divisional Magistrate (SDM). The SDM recorded the statement of the father of the deceased, Dr. K. P. Singh, an eminent scientist. The SDM also recorded the statements of Mrs. Rukma Singh, mother of the deceased and Prashant Singh, brother of the deceased. Their statements were read before me by the learned Special Public Prosecutor, Mr. R. K. Anand, Senior Advocate. Neither the father nor the brother of the deceased suspected any foul play in the death of the deceased at the hands of the petitioner. It has come in their statements that the deceased was hot headed, short tempered and had committed suicide. The brother of the deceased, Prashant Singh, stated that once earlier also the deceased had a tempted to commit suicide because of her temperament.

6. The elder sister of the deceased, Ms. Reeta Veneck, had sent a fax message from USA containing her statement that she did not suspect any foul play and she did not blame the petitioner.

7. Another elder sister of the deceased, Ms. Rashmi Singh, who was living in Canada came to India on 14.2.2000 i.e. after one month and four days of the unfortunate incident. On 16.3.2000 i.e. after two months and six days of the incident and after one month and two days of her arrival in India, she submitted a 12 page typewritten statement to the SDM in which she leveled allegations of harassment and torture against the petitioner. On 22.3.2000 she submitted another 7 page supplementary statement to the SDM. she had also handed over two diaries and two letters, purported to have been written by the deceased, to the SDM.

8. On 21.3.2000 Mrs. Rukma Singh, mother of the deceased, appeared before the SDM and she also supported the stand of her daughter, Ms. Rashmi Singh and stated that earlier she had not made statement against the petitioner because she was apprehensive about the welfare of Aaliya, the daughter of the deceased.

9. The SDM prepared his report and sent it to the Deputy Commissioner of police (East) for necessary action. Thereafter, on 27.3.2000 FIR No. 94/2000 was registered at P.S. Trilok Puri under Sections 498A/304B/201/34 IPC after two months and seventeen days of the incident. The petitioner was arrested on 28.3.2000.

10. From the FIR it is borne out that immediately after the incident the deceased was taken by the petitioner to the nearest hospital namely the Virmani Hospital, where on the advice of doctors Anju was rushed to the All India Institute of Medical Sciences (AIIMS). According to the doctors at AIIMS, Anju Ilyasi was brought dead at 12.26 a.m. on 11.1.2000 so, no dying declaration could be

recorded. A dying declaration was also not recorded at the Virmani Hospital.

It is also mentioned in the FIR that a panel of three Senior doctors from three leading hospitals of Delhi, namely, AIIMS, Safdarjung Hospital and Aruna Asaf Ali Hospital was constituted to conduct the post mortem on 12.1.2000 at AIIMS mortuary. The doctors were also given the knife seized from the site. Finger prints were also taken of the deceased and of the petitioner, Suhaib Ilyasi as he was the only other adult present in the house at the time of incident. It is also incorporated in the FIR that from the finger prints which were lifted from the wall and from the knife numbered as Q1 to Q5 the report of CFSL (CBI) has ruled out the finger prints of Suhaib Ilyasi. The finger prints Q1 to Q5 on the knife were not confirmed matching to Anju Ilyasi's finger prints either.

According to the FIR the board of doctors on 18.1.2000 opined that the injury No.1 is 15.5 cms deep from the external injury to the point of injury to the Aorta. 2) The cut of Aorta was obliquely placed on left antereolateral wall. 3) The distance of Aorta from ant. abdominal was 10 cms and Aorta was usually placed. 4) Injury No.1 & 2 are self inflicted and suicidal in nature.

The FIR also mentioned that the statements recorded after the death of Anju Ilyasi in the alleged incident included the statements of the father, brother and mother of the deceased. None of them suspected any foul play. They stated that the deceased was intelligent, head strong and had earlier attempted to commit suicide. According to them Anju committed suicide.

11. In the FIR it is also mentioned that Ms. Rashmi Singh, sister of the deceased, had submitted a 12 page typewritten statement to the SDM on 16.3.2000 and on cross-examination on certain points she stated as under:-

- (1) The husband of the deceased inflicted extreme mental and physical torture on late Mrs. Anju Ilyasi.
- (2) Anju was being neglected financially and emotionally and Anju was tortured by Suhaib, his mother, his father and his sister-in-law (Rukhsana in 1994).
- (3) Anju was physically tortured by Suhaib in December 1994.
- (4) Anju was ill treated by her husband.
- (5) She alleged Suhaib's misbehaviour, torture & cruelty in September 1996.
- (6) Suhaib stopped all financial help to my sister and was neglecting her on all counts (January 1997 onwards).
- (7) Suhaib developed relation/affair with Neha, daughter of Mrs. Nayyar and driven Anju to start thinking about divorce.
- (8) On 10th January 2000 Suhaib told Rashmi Singh on telephone that he would take care of Anju & Rashmi need not interfere.
- (9) A letter sent by Prashant and reportedly destroyed by Suhaib & family

members and the letter contained vital facts which might have proved decisive.

(10) He threatened to cause harm to my sister's daughter Aaliya in my family members presence on January 23,2000.

(11) Allegations that Suhaib acted in a planned and calculated manner with common object & intention to finish my sister.

12. In the FIR it is also incorporated that on 22.3.2000 Ms. Rashmi Singh had submitted a detailed statement mentioning how Suhaib had committed passport forgery, bank forgery, credit card forgery and academic qualifications forgery. This fact was in the knowledge of Anju Ilyasi only and she wanted to get rid of all this cheating by leaving Suhaib and by going to Canada on 3.2.2000. This was the motive for Suhaib to kill Anju so that these forgeries could never be made public. According to Mr. Rajinder Singh, learned Senior Counsel for the petitioner, if this fact was within the knowledge of the deceased alone then how did Mrs. Rashmi Singh learn about it? In the FIR it is mentioned that the mother of the deceased, Mrs. Rukma Singh, appeared before the SDM on 21.3.2000 and stated that she was in entire agreement with the statement of her daughter Ms. Rashmi Singh given on 16.3.2000.

13. In the concluding portion of the FIR it is mentioned that the post mortem report has clearly indicated that both injuries No. 1 & 2 were self inflicted and suicidal in nature. The various CFSL reports regarding blood group, finger prints, viscera etc. have also not indicated anything specific to point that Anju Ilyasi was killed. However, Ms. Rashmi Singh (sister of the deceased) in her statements has alleged suspicion of murder along with harassment and torture by her husband and in-laws during her married life and, Therefore, the SDM forwarded all the documents (post mortem report, forensic reports, three diaries and statements of all concerned) to DCP (East) for further investigation and necessary legal action as per the relevant provision of law.

14. On receipt of report of inquest proceedings u/s 176 Cr.P.C. into the death of Anju Ilyasi by SDM, Preet Vihar, a case u/s 498A/304B/201/34 IPC was registered at police station Trilok Puri.

15. Mr. Rajinder Singh, learned Senior counsel appearing for the petitioner submitted that on the basis of the entire material available on record no offences u/s 304A, 498A and 201 IPC can be made out against the petitioner. He submitted that the entire chain of events lead to only one conclusion that Mrs. Anju Ilyasi had committed suicide. The alleged incident had taken place in the night of 10.1.2000 and on the very next day the statement of the father of the deceased, Dr. K .P. Singh, an eminent scientist and a former professor of IIT, Kanpur, Mrs. Rukma Singh, mother of the deceased and Mr. Prashant Singh, brother of the deceased were recorded and all three of them did not suspect any foul play and did not level any allegation against the petitioner. Mr. Prashant Singh had even mentioned that his mother had once told him that the deceased had earlier made an attempt to commit suicide. He also stated that the deceased

was intelligent and head strong.

16. Mr. Rajinder Singh also submitted that neither in any of the statements nor in the entire material on record there is any allegation of demand of dowry or harassment of the deceased for not fulfilling those demands. Mr. Rajinder Singh submitted that the basic ingredient of Sections 304B and 498A IPC is the demand for dowry. He submitted that in absence of any allegation of demand for dowry the petitioner cannot be held guilty of any offences u/s 498A and 304B IPC. He also submitted that by no stretch of imagination any offence under Sections 498A or 304B IPC can be made out against the petitioner. He further submitted that there is no evidence on record to substantiate the charge u/s 201 IPC against the petitioner. He submitted that the police have added the offence u/s 201 IPC which relates to the destruction of evidence and there is no evidence much less any allegation on record by which the petitioner can be involved in any case u/s 201 IPC. He further submitted that when there are no allegations against anyone else then how can Sections 201/34 IPC be made out.

17. Mr. Rajinder Singh submitted that the allegations of torture and harassment were made for the first time on 16.3.2000 by Ms. Rashmi Singh after two months and six days of the unfortunate incident in a 12 page typewritten statement. He submitted that even in that statement she does not level any allegation of demand for dowry. He submitted that in the absence of demand for dowry no case is made out against the petitioner u/s 498A and 304B IPC.

18. Mr. Singh also submitted that the entire conduct of the petitioner demonstrated his total innocence. The petitioner had immediately after the alleged incident taken Anju to the nearest hospital namely, Virmani Hospital. From there she was rushed to the AIIMS on the advice of doctors at Virmani Hospital. He also submitted that the weapon of offence i.e. the knife was admittedly recovered on the spot itself. The petitioner did not make any effort to wipe out the vital evidence in this case. He submitted that the petitioner had exemplary love and affection towards the deceased and his daughter Aaliya. He has even named his production company after the name of his daughter Aaliya. The deceased too was inducted as director by him in that company. The petitioner had purchased B-13 IFS Apartments with his own finances and had added the deceased as equal owner of the same. It is submitted that the deceased has been abroad for studying and site seeing and the petitioner had been meeting the expenses. The petitioner had got furnished the flat to the liking of the deceased which costed him huge finances. Mr. Singh submitted that these are few examples of the petitioner's love and affection towards the deceased and his daughter.

19. Mr. Singh urged that no reliance can be placed on the typewritten statement submitted by Ms. Rashmi Singh, sister of the deceased, to the S.D.M. after one month and two days after her arrival in India. He also submitted that immediately upon her arrival she did not make any statement before the SDM and instead she handed over a 12 page prepared typewritten statement at the

behest of some other persons after so many weeks only with ulterior motives. Mr. Singh submitted that Ms. Rashmi Singh was interested in the custody of the petitioner's beautiful child Aaliya and that is why, she had made the statement against the petitioner. Mr. Singh also submitted that in this case where there is no legal evidence against the petitioner connecting him with the offences under Sections 304B/498A/201/34 IPC he cannot be denied bail, particularly when the investigation is almost over.

20. Mr. R. K. Anand, learned Special public Prosecutor and Senior Advocate appearing for the State submitted that because of the serious allegations of dowry harassment, the trial court was totally justified in declining the bail to the petitioner. He submitted that the demand of dowry need not be direct and it has to be gathered from the circumstances. Mr. Anand has read out in extenso some portions of the diaries which were maintained by the deceased, Mrs. Anju Ilyasi. He submitted that the contents of the diaries do reveal that the married life of the deceased and the petitioner was far from being cordial or smooth. The contents also reveal that she was facing financial constraints. But the contents of the diaries read out in Court did not reveal that there was any demand of dowry.

21. Mr. Anand submitted that the demand of dowry has to be inferred from the circumstances and he has placed reliance on Pawan Kumar and Others Vs. State of Haryana, . He has also placed reliance on Prabhudayal and others Vs. State of Maharashtra, . He also relied on Baldev Krishan Vs. State of Punjab 1997 (4) SCC 428. Reliance has also been placed by him on Subedar Tiwari Vs. State of U.P. & Ors. 1989 Supp.(1) SCC 99, State of U.P. Vs. Ramesh Prashad Mishra & Anr. 1996 SCC (Cri) 1278 , Alamuri Lalitha Devi Vs. State of Andhra Pradesh, and Shrirang Narayan Datal Vs. State of Maharashtra 1997. (3) Cri 357.

22. Mr. Anand submitted that on demand, the petitioner was given 10,000/- Canadian Dollars by Ms. Rashmi Singh and another Rs. 18,000/- were given to the petitioner. Repudiating this argument, Mr. Rajinder Singh submitted that 10,000/- Canadian Dollars were given as a business loan and a loan agreement had been drawn up in the handwriting of Ms. Rashmi Singh. A photo copy of the said loan agreement is annexed as Annexure-D. He submitted that this loan amount was returned. He submitted that this loan amount was returned. He submitted that Rs. 18,000/- were given for the number of telephone calls made by Ms. Rashmi Singh and by no stretch of imagination these two transactions can be termed as demand of dowry.

23. Mr. Singh placed reliance on judgment of the Supreme Court in S. Gopal Reddy Vs. State of Andhra Pradesh, . Their Lordships of the Supreme Court in the judgment had held that the Legislature in its wisdom while providing for the definition of "dowry" emphasised that any money, property or valuable security given, as a consideration for marriage, "before" on or "after" the marriage would be covered by the expression "dowry". He submitted that in the instant case a loan given to the petitioner or a payment of Rs.18,000/- towards telephone bill cannot by any stretch of imagination be termed as a demand for dowry.

24. Mr. Rajinder Singh has read out Sections 304B and 498A IPC. They are reproduced as under:-

304 B. DOWRY DEATH :- (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 purposes 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 7 years but which may extend imprisonment for life.

498-A. Husband or relative of husband of a woman subjecting her to cruelty :- Whoever, being the husband or the relative of the husband of a woman, subjects such woman, to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation._ For the purposes of this Section, "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

25. According to Mr. Singh the demand of dowry and harassment for not fulfilling the same is the back bone of the offences under Sections 304B and 498A IPC. He submitted that there is no foundation for demand for dowry and there is no material whatsoever on record to attract the provisions of Sections 304B and 498A IPC. He submitted that no case is made out against the petitioner. He has also placed reliance on a number of judgments. To strengthen his submissions he has also placed reliance on a judgment of the Punjab & Haryana High Court reported as Maninder Singh Vs. State of U.T. Chandigarh 2000 (1) RCR 831 . While taking support from the case of The State of Punjab Vs. Iqbal Singh and others, he submitted that cruelty or harassment should be in connection with the demand for dowry. He emphasised that there is no foundation for dowry demand either in the statements, FIR or in the entire material on record. Therefore, the petitioner cannot be convicted for the offences alleged in the FIR.

26. Mr. Rajinder Singh also submitted that though the diaries are not admissible

in evidence, but even in those diaries there was no foundation for demand for dowry by the petitioner. Mr. Singh placed reliance on the celebrated case of AIR 1939 47 (Privy Council) . This case is an authority for the proposition that circumstances must have some proximate relation to the actual occurrence and must be of the transaction which resulted in the death of the declarant.

27. I may reiterate that I have merely reproduced the arguments of the learned counsel for the parties, and have cited the cases on which reliance has been placed by them. I have deliberately refrained from giving my conclusions on various arguments advanced by the learned counsel for the parties. Narration of the facts should not be construed as expression of opinion by the learned trial court. The trial court must conduct the trial in accordance with law without being influenced by any of the averments mentioned in this order.

28. On consideration of totality of the facts and circumstances and in the interest of justice, I deem it appropriate to release the petitioner on bail on following conditions :

- a) The petitioner shall execute a personal bond in the sum of rupees two lakhs with two local sureties of the like amount to the satisfaction of the trial court.
- b) The petitioner shall surrender his passport to the trial court.
- c) The petitioner shall not leave the National Capital Territory of Delhi without prior permission of the trial court.
- d) The petitioner shall not try to intimidate, threaten, influence or allure the prosecution witness in any manner.
- e) In case of any breach or violation of any of the aforesaid conditions, the State would be at liberty to move the Court for cancellation of the petitioner's bail.

29. The bail petition is accordingly disposed of.