

2023 SCC OnLine Del 5377

In the High Court of Delhi at New Delhi
(BEFORE AMIT SHARMA, J.)

Bhuwan Sharma ... Petitioner;

Versus

State ... Respondent.

Bail Appln. 1479/2023

Decided on September 1, 2023

Advocates who appeared in this case:

Mr. Kirti Uppal, Senior Advocate with Mr. Harshit Jain, Mr. Moksh Arora, Mr. Himanshu Bidhuri, Mr. Shekhar, Mr. Chandan Sinha, Mr. Prakhar Sharma & Mr. Ashish, Advocates.

Mr. Aman Usman, APP for the State with SI Ankur Ohlan, P.S. Rajouri Garden.

The Judgment of the Court was delivered by

AMIT SHARMA, J.:— The present application under Section 439 of the Criminal Procedure Code, 1973 ('CrPC') seeks grant of regular bail in FIR No. 614/2021, under Sections 498A/304B/306/406/34 of the Penal Code, 1860 ('IPC') registered at P.S. Rajouri Garden.

2. The brief facts of the present case, as stated in the status report dated 24.05.2023, authored by SHO, P.S. Rajouri Garden, are as follows:

- i. The present FIR was registered on 16.07.2021, at the instance of Sh. Ram Gopal Sharma, father of the deceased Komal Sharma against her husband, Bhuwan Sharma (the applicant) under Sections 306/498A/34 of the IPC. The applicant and the deceased were married on 30.11.2020. It was alleged that the deceased and the applicant fought regularly. The complainant (father of the deceased) was informed by his wife that the deceased was being harassed by her in-laws. It was stated that a day before the date of incident, the deceased came to her parental home and told the complainant that she does not wish to return to her matrimonial home.
- ii. On 16.07.2021, Richa (sister-in-law of the deceased) called the complainant and informed him that the deceased was unwell. On reaching there, the complainant found out that his daughter had hung herself with a *chunni* tied to a ceiling fan and had passed away. Since the deceased had been married for only about eight months, the SDM was informed. In the post mortem report dated

16.07.2021 of the deceased, the cause of death was stated to be "*asphyxia caused by hanging*" and it was stated that the manner of death appears to be "*suicidal*".

- iii. The applicant was arrested on 18.07.2021 and was released on bail on 18.07.2021. On 21.08.2021, a copy of the list of articles/*stridhan* of the deceased was obtained. The said list was admitted by the applicant on 25.08.2021. Thereafter he was rearrested on 29.09.2022.
- iv. On 25.10.2021, supplementary statements of the family members of the deceased were recorded under Section 161 of the CrPC wherein, for the first time, they made specific allegations against the husband (the applicant), mother-in-law, father-in-law, sister-in-law and brother-in-law of the deceased. It was alleged that the deceased was harassed by her in-laws for dowry. They demanded Rs. 1 crore, a car, jewellery etc. and often taunted her to leave the matrimonial home. Due to the alleged behaviour of her in-laws, the deceased was compelled to commit suicide. Based on the supplementary statements, Sections 304B and 406 of the IPC were added in the FIR.
- v. On 21.12.2022, chargesheet in the present case has been filed *qua* the applicant, under Sections 498A/304B/306/406/34 of the IPC.
- vi. *Vide* order dated 31.07.2021, the learned ASJ-02, Tis Hazari Courts, Delhi, passed the order on charge *qua* the applicant and his family members. Subsequently, formal charges were framed on 01.08.2023, *qua* the accused persons, including the applicant, under Sections 498A/34 of the IPC and Sections 304B/34 of the IPC and in alternate Sections 306/34 of the IPC.

3. Learned Senior Counsel appearing on behalf of the applicant submitted that the deceased and the applicant knew each other since childhood as they had done their schooling from the same institution. It is pointed out that the families of the deceased and the applicant had cordial relations since many years and as they were also living in the close vicinity the families used to visit each other. It is further pointed out that the marriage between the applicant and the deceased was a love marriage but the parents of the deceased were not happy with the aforesaid marriage.

4. Learned Senior Counsel for the applicant further submitted that the present FIR was registered on account of a complaint made by the father of the deceased, on 16.07.2021, wherein he made allegations against the present applicant that the latter used to fight with the deceased. It was further stated that he was told by his wife that the deceased was being harassed by her in-laws and the day before the incident she had come to her parental home and had stated that she

does not want to go back to her matrimonial house. It was pointed out that in the aforesaid complaint there was no mention of dowry demand on the part of the applicant or his family members. It was further submitted that the applicant was arrested in the present FIR on 18.07.2021 and was granted bail by the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi *vide* order dated 18.07.2021. It was further stated that there was an application moved on behalf of the complainant bearing Application No. 2326, under Section 439(2) of the CrPC for cancellation of bail granted to the applicant *vide* order dated 18.07.2021, which was withdrawn by the complainant *vide* order dated 17.08.2021. It was further pointed out that the family members of the deceased preferred various social media posts and media interviews against the applicant as well as his family members, however, no allegations were made in relation to dowry demand in the aforesaid posts. The present applicant was re-arrested on 29.09.2022. It was submitted that in a statement made by the mother of the deceased on 25.10.2021, the allegations with respect to dowry demand were made for the first time after a gap of three months from registration of the present FIR.

5. Learned Senior Counsel appearing on behalf of the applicant submitted that this Court *vide* separate orders dated 16.03.2023 has disposed of applications for anticipatory bail moved on behalf of Richa Baluja, the sister-in-law of the deceased (BAIL APPLN. 98/2023), Aman Baluja, brother-in-law of the deceased (BAIL APPLN. 110/2023), Sunita Sharma, mother-in-law of the deceased (BAIL APPLN. 165/2023) and Dinesh Sharma, father-in-law of the deceased (BAIL APPLN. 171/2023).

6. In support of the aforesaid submissions, learned Senior Counsel has placed reliance on the following judgments:

- i. *Amit Sharma v. State (Govt. of NCT of Delhi)*, 2021 SCC OnLine Del 835.
- ii. *Pawan Tiwari Through his Pairokar v. State of NCT of Delhi, Through Standing Counsel Criminal*, 2023 SCC OnLine Del 1549.
- iii. *Teekam Singh v. State of NCT of Delhi*, 2023 SCC OnLine Del 491.
- iv. *Sonu Verma v. State NCT of Delhi*, 2023/DHC/1121.
- v. *Suraj Malik v. State Govt. of NCT of Delhi*, 2023 SCC OnLine Del 862.

7. *Per contra*, learned APP for the State, assisted by learned counsel appearing on behalf of the complainant, opposed the grant of bail to the present applicant on the ground that there are serious allegations against the applicant. It is pointed out that mother of the deceased in her statement dated 25.10.2021, corroborates the allegations with regard to the deceased coming a day before the incident and informing her about demand of dowry made by the applicant and his family

members. It was further submitted that the deceased suffered harassment at the hands of the applicant and other co-accused persons and was compelled to commit suicide because of their behaviour.

8. Heard learned counsel for the parties and perused the record.

9. It is not in dispute that in the first statement made by the parents of the deceased before the Sub-Divisional Magistrate ('SDM'), on 16.07.2021, they did not make any allegation with respect to demand of dowry by the applicant. The statement made by them were to the effect that there used to be fights between the couple and on account of the same the deceased was unhappy and did not want to go back to her matrimonial home. The allegations with respect to dowry demand were made by the parents of the deceased for the first time in their statements dated 25.10.2021. Perusal of the aforesaid statements show that the allegation was to the effect that demand of dowry started soon after the marriage between the couple. It was stated that the deceased used to tell her parents that the family members of the applicant used to demand dowry of Rs. 1 crore and threatened if the same was not met with they would get the applicant married again. As per their statements the deceased also told them that she was taunted for bringing less jewellery.

10. It is pertinent to note that in the statements made by the deceased's parents it is nowhere alleged that the applicant himself or his family members ever demanded dowry from them. The statements are also bereft of any particulars in terms of date or time with regard to instances of demand of dowry. The statements made by the parents of the deceased, i.e., before the SDM and subsequently during the course of the investigation are at variance. The fact that the second statement was made after a gap of 3 months cannot be ignored at this stage for the purpose of consideration of present bail application. The veracity of allegations made by the parents of the deceased in the subsequent statement will be determined during the course of the trial by the learned Trial Court. As pointed out hereinabove, the investigation in the present case has been completed. Charges *qua* the present applicant as well as against his family members have been framed by the learned Trial Court. As per the nominal roll dated 23.05.2023, received from the Office of the Superintendent, Central Jail No. 7, Tihar, New Delhi, the applicant is in judicial custody since 30.09.2022.

11. In view thereof, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an

affidavit and to the Investigating Officer regarding any change in residential address.

iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.

iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.

v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

12. The application is allowed and disposed of accordingly.

13. Pending application, if any, also stand disposed of.

14. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.

15. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

16. Judgment be uploaded on the website of this court *forthwith*.

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