

Sangita Devi vs.state

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Court : Delhi

Decided On : Oct-26-2017

Appellant : Sangita Devi

Respondent : State

Judgement :

\$~ * + 1. IN THE HIGH COURT OF DELHI AT NEW DELHI BAIL APPLN. 1812/2017 Order reserved on:15th September,2017 Order pronounced on:26th October,2017 SANGITA DEVIPetitioner Through: Mr. Kamlesh Kumar Mishra with Mr. Vishal Kalra, Advocates STATE versus Through: Mr. Mukesh Kumar, APP for the State with Inspector Rajender Singh, Police Station NarelaRespondent CORAM: HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL By way of the present petition filed under Section 438 of the Criminal Procedure Code,1973 (hereinafter referred as Cr.P.C.) the petitioner seeks grant of anticipatory bail in respect of FIR No.0401/2017, under Section 498A/304B/34 of The Indian Penal Code,1860(hereinafter referred as IPC), registered by P.S. Narela, New-Delhi.

2. Briefly stated the facts of the case are that on receiving an information vide DD No.85/B that one Kanchan aged 26 years was brought to the SHRC Hospital on MLC No.3732/17, who was declared brought dead by the doctors. The deceased body was inspected by SDM who seized the Chunni and Parde Ki Rod from the spot and further sent the body to Mortuary BJRM Hospital for post mortem. On request made by the parents of the deceased, a BAIL APPLN. 1812/2017 Page 1

of 5 board of doctors was constituted. Thereafter, the case was registered on 15.05.2017 against the husband, Father-in-Law, Mother-in-Law and Sister-in-Law of the deceased. On 15.05.2017, complaint was lodged by the complainant/ Pradeep Kumar/ father of the deceased who stated that his daughter who was 26 years of age got married to Santosh Kumar/husband of deceased on 13.07.2016; that the mother in law and the father in law of his daughter were demanding dowry from her daughter on account of which huge amount was already paid to them; that when the dowry demands were not fulfilled, they killed his daughter on 12/05/2017.

3. Mr. Kamlesh Kumar Mishra, the learned Counsel for the petitioner contends that the present FIR filed against the petitioner for demand of dowry is false and fabricated; that the petitioner got married on 12.07.2003 and since then she has been staying at her matrimonial house in Faridabad; that on 12.05.2017, she was not present at her parental house at the time of incident; that the deceased was suffering from depression due to unemployment of her husband and did not want to stay at her matrimonial house in Delhi; that the husband of the deceased is in judicial custody after the incident; that on 06.06.2017, an interim bail was granted to the petitioner and continued till 01.08.2017; that on 11.08.2017, another bail application was rejected by this court in view of gravity and nature of offence.

4. The learned APP has vehemently opposed the bail application by stating that the petitioner has not joined the investigation after the dismissal of the bail application by the learned ASJ on 11.08.2017; BAIL APPLN. 1812/2017 Page 2 of 5 that as the petitioner is absconding, various raids have been conducted but she is still not traceable; that the allegation against the petitioner is serious and grave in nature, therefore, the present bail application should not be granted.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. After giving careful consideration to the entire facts, it is found that in the instant case, the deceased died within 10 months of her marriage. Admittedly, the deceased was married to the brother of the petitioner against whom there are allegations of demand of dowry. The Post Mortem Report stated the cause of

death of the deceased to be Asphyxia as a result of ante mortem hanging. Due to the gravity of the offence and the seriousness of the allegations, it is necessary in the present case that the police should be given free hand to interrogate the petitioner rather than protect the petitioner by an anticipatory bail order. It has been clearly stated in the Status Report, that the petitioner is absconding and not joining the investigation since 11.08.2017, on account of which investigation could not be completed till date. In my view, since the case is at the threshold and the investigations are underway, it will be practically scuttling the investigation in case the anticipatory bail is granted to the petitioner which will create hurdles in arriving at the truth.

7. Determining the parameters in granting anticipatory bail in cases of serious offences. The Supreme Court in Bhadresh Bipinbhai BAIL APPLN. 1812/2017 Page 3 of 5 Sheth vs State Of Gujarat & Anr reported in (2016) 1 SCC152 after analyzing the entire law has observed as under:-

"Impact of grant of anticipatory bail large magnitude (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; (b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence; (c) The possibility of the applicant to flee from justice; (d) The possibility of the accused's likelihood to repeat similar or other offences; (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (f) particularly affecting a very large number of people; (g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern; (h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused full in cases of to free, fair and BAIL APPLN. 1812/2017 Page 4 of 5 and humiliation investigation, and there should be prevention of harassment, unjustified detention of the

accused; (i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; (j) Frivolity in prosecution should always be considered and the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail. it is only 8. In view of the aforesaid settled principles, the facts and circumstances of the present case and perusing the allegations leveled against the petitioner, and considering the gravity of offence, this court is not inclined to grant anticipatory bail to the petitioner. Accordingly, the petition stands dismissed.

9. Observations made in the order shall have no impact on the merits of the case.

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