

Santosh Gupta vs.state

Santosh Gupta vs.state

SooperKanoon Citation : sooperkanoon.com/1211818

Court : Delhi

Decided On : Jan-09-2018

Appellant : Santosh Gupta

Respondent : State

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

9. h January, 2018 SANTOSH GUPTA BAIL APPLN. 1773/2017

... Petitioner

Represented by: Mr. Udayan Jain, Mr. Kamal Sharma, Advs. STATE versus
Respondent Represented by: Mr. Hirein Sharma, APP with SI Mahendra PS
Keshav Puram. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA
GUPTA, J.

(ORAL) 1. By this petition the petitioner seeks regular bail in case FIR
No.765/2016 under Section 498A/304B/34/302 IPC registered at PS Keshav
Puram.

2. Learned counsel for the petitioner submits that the two Whatsapp messages on
the basis of which it is claimed that the petitioner was harassing the daughter-in-
law/ the deceased do not implicate the petitioner by way of dowry harassment or
any other mental cruelty. The deceased was in the first trimester of her pregnancy
and the advise by the mother-in-law not to squat for a long time cannot be said to

be unwarranted for the reason the deceased was weighing 45 Kgs, had low B.P. and was not in good health with regular follow-ups. Merely because the mother-in-law declined to accede to the request by the deceased to go to her parents house cannot be said to be a BAIL APPLN.1773/2017 Page 1 of 5 cruelty or harassment in relation to demand of dowry. The deceased died due to Aluminium Phosphide poisoning which cannot be given forcefully and would at best be a case of suicide. He further states that after the deceased consumed Aluminium Phosphide, it was the petitioner and her son who took her to the hospital and on reaching the hospital besides collecting Gastric Lavage of the deceased she was also put on ventilator including oxygen, and the MLC of the petitioner reveals that on reaching the hospital she was drowsy and irritating which would have caused the injuries while treatment was going as the first sheet of the treatment shows that there was no injury marks on the deceased. He further states that since the charge- sheet has already been filed and the deceased is suffering from number of ailments, she be released on bail.

3. Learned APP for the State on the other hand contends that initially FIR was registered for offence punishable under Section 498A/304B IPC, however on the subsequent opinion of the post-mortem doctor Section 302 IPC has also been added as the injuries on the face were opined to be by force. Learned APP for the State further states that the main allegation of harassment even as per the last Whatsapp are against the petitioner. Hence no bail be granted to the petitioner.

4. The above-noted FIR was registered on the complaint of Shashi Garg, mother of Neha who stated that her husband had received a phone call from Neha's father-in-law stating that she was unwell. So she along with her husband reached the hospital. They were not allowed to meet their daughter and after a short while it was told that the girl had died. The incident had occurred the day before at 12 Noon and a quarrel had taken place between her daughter and mother-in-law on Saturday. Her daughter used to tell her BAIL APPLN.1773/2017 Page 2 of 5 that her mother-in-law used to give example of dowry given by other persons and that they did not get anything. Her mother-in-law was also not happy with the gifts sent on Diwali and was saying that nothing has been given to her. The day before when Neha told to her husband he stated that she should not take the words of her

mother seriously and the issue of toilet was not a big issue. Her daughter was pregnant and later she came to know that her daughter died due to torture. It is alleged that the in-laws used to torture her daughter. It is also alleged that earlier whenever even Neha had pain in stomach, her mother-in-law and her husband used to make phone calls to tell them but yesterday none of them informed them.

5. As per the post-mortem report and the FSL report, the deceased died due to poisoning of Aluminium Phosphide. The discharge summary of the deceased reveals that her gastric lavage was collected, sample whereof was seized and handed-over to the Investigating Officer. Further on being hospitalised the deceased was given ventilator support which would obviously include an oxygen mask. There is merit in the argument of learned counsel for the petitioner that the injuries could be during treatment as at the time of admission it is categorically noted that the deceased had no injury on her body. Further the MLC notes the deceased to be drowsy and irritating. However, the post-mortem report notes three external injuries which could be caused by blunt/ trauma as under: EXTERNAL INJURIES:

1. Reddish contusion of size 0.3 x 0.1 cm was present over the right side of face, situated 2.1 cm above and 0.5 cm away from the symphysis menti. BAIL APPLN.1773/2017 Page 3 of 5 2.

3. Reddish contusion of size 0.2 x 0.1 cm was present over the right side of face, situated 2.1 cm above and 0.3 cm away from the symphysis menti. Fresh superficial laceration of size 01 x 0.5 cm was present over the inner aspect of lower lip. 6. Further as per the treatment sheet placed on record and as per the post-mortem report the deceased was pregnant and it was her first trimester. The medical sheets have been placed on record to show that the weight of Neha was 45 Kgs, she had low B.P. and she was on a regular follow-up. It is in this light the last two whatsapp messages have to be read which are as under: i) Mom ab bahut ho gaya Ab to mere saas mujhe toilet ke time ko bhi lekar bolne lagi ki thuje itna time lagta hai Mujhe yaha see le jayo please aaj hi ii) Mana kar diya ma bhejne se.

7. Thus, the two allegations soon before the death against the petitioner are that she refrained the deceased from sitting for too long in the toilet and refused to

send her apparently to her parental place. The two messages do not speak about a dowry harassment and at this stage refraining from giving any final opinion it would be worth mentioning that considering that the deceased was in the first trimester of her pregnancy and an advise rendered not to squat for long or not to travel cannot be said to be harassment. The other allegations against the petitioner are her dissatisfaction for the gifts received at the time of Diwali.

8. Considering the nature of allegations, the fact that the deceased died of Aluminium Phosphide poisoning which is most likely suicidal in nature, BAIL APPLN.1773/2017 Page 4 of 5 the petitioner has been in custody for the last 8 months and charge-sheet has been filed and due to the medical condition of the petitioner, this Court deems it fit to grant bail to the petitioner. It is therefore directed that the petitioner be released on bail on her furnishing a personal bond in the sum of 25,000/- with one surety bond of the like amount subject to the satisfaction of the learned Trial Court, further subject to the condition that the petitioner will not leave the country without the prior permission of the Court concerned and in case of change of address the same will be intimated to the Court concerned by way of an affidavit.

9. Petition is disposed of. Order dasti.

10. The date already fixed stands cancelled. (MUKTA GUPTA) JUDGE
JANUARY09 2018 ga BAIL APPLN.1773/2017 Page 5 of 5

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com