

Priyanka Vs. State

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Court : Delhi

Decided On : Sep-25-1998

Reported in : 1999IAD(Delhi)52; 76(1998)DLT204; I(1999)DMC238

Judge : J.B. Goel, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438; [Indian Penal Code \(IPC\), 1860](#) - Sections 304-B

Appeal No. : Crl. M.(M.) No. 1741 of 1998

Appellant : Priyanka

Respondent : State

Advocate for Pet/Ap. : Mr.I.U. Khan, Adv;Mr. S.C. Bhuttal Adv

Judgement :

J.B. Goel, J.

1. Petitioner seeks anticipatory bail under-Section 438 of the Code of Criminal Procedure (for short the 'Code'). The deceased Manju dies an unnatural death on 12.4.1998. The petitioner is the sister-in-law (Nanda) of the deceased. The stand of the in-laws of the deceased appears to be that the deceased had committed suicide, as she was in a disturbed state of mind because she could not conceive a child. Whereas the case from her parental side is that she was being subjected to

cruelty and harassed and tortured in connection with demand of dowry article and they suspect having been killed by her in-laws.

2. Learned Counsel for the petitioner has argued the matter at great length and has cited a number of authorities. This bail is strongly contested on behalf of the State, who relied on the facts, circumstances and the material available during investigation.

3. Briefly the facts are that the deceased Manju was married with Pradeep Khanna on 15.2.1997. She died an un-natural death on 12.4.1998 at her matrimonial house. According to her in-laws, she died of hanging herself and was found hanging in the afternoon on 12.4.1998 in a room on first floor of the house. Intimation apparently had not been given to her parents or her other relations, by her-in-laws of their own, soon after her death. It is alleged by her parental relations that Mohindra, brother of deceased had telephoned from Gurgaon to talk with the deceased at about 1.00 p.m. and as there was some trouble with her sister one day earlier when they had talked to her on phone, which she could not tell as her-in-laws were present near about her; he was informed by Pradeep Khanna (husband) that the deceased had gone to Bazar. He again telephoned at about 3.00 p.m. when he was informed by Pradeep Khanna that the deceased 'Uper Chali Gaye Hai' and the telephone line was cut off suddenly. He again telephoned after some time to ascertain when he was informed that the deceased had committed suicide and had died.

4. No intimation about the death was given to the brother from her inlaws side. Some relations of the deceased from her parental side on being so informed came in the evening and found the deceased lying dead. A report was lodged by one Dev Raj Ahuja, husband of the sister of the deceased, which was registered at Police Station Krishna Nagar as DD No. 27 A at 7.20 p.m. on 12.4.98 wherein it was alleged that they suspected that the deceased had been killed by her in-laws. The copy of this DD was entrusted to SI Ashok Kumar who reached the spot and found the dead body and informed the SDM of the area Smt. Varsha Joshi, the SDM had reached the spot. A suicide note alleged to have been recovered from the person of the deceased was handed over to the SDM. The learned SDM on

the same night recorded the statement of Smt. Shiela Devi, Smt. Promila and Shri Mohinder, mother, sister-in-law (Bhabhi) and brother respectively of the deceased who alleged maltreatment being given to the deceased inter alias by mother-in-law and sister-in-law (petitioner herein) of the deceased. Some instances of recent quarrels and beatings were also stated. Statement of Smt. Kailash Ahuja, sister of the deceased was recorded by the SDM on 16.4.1998 at 2.00. She also alleged about the deceased having told her about harassment and being subjected to cruelty/beatings and also about demand of a car from the deceased to be given by her parents inter alias by the sister-in-law and mother-in-law. Post mortem on the dead body was conducted by Dr. Suresh Tandon at Civil Hospital mortuary on 13.4.1998 at 12.30 p.m. in which physical condition of the deceased and ligature marks on the neck of the deceased were noticed. The doctor had opined the cause of death as 'asphyxia and apoplexy consequent to mechanical obstruction of throat structure caused by ligature'. The time since death was about 22 hrs.

5. According to the post-mortem report the proximate time of death would be 2.30 p.m. on 12.4.98. As already noticed no intimation was given to the police by the in-laws' side. Smt. Varsha Joshi, the learned SDM did not submit her report of enquiry conducted by her under Section 174 of the code though the parent side of the deceased strongly suspected that the deceased had been killed.

6. Later on perhaps on the complaints made by the parental side his inquiry was withdrawn from her and was entrusted to her successor Shri C. Uday Kumar, SDM on or about 25.5.1998. He accorded statements of some other persons and found that a prima facie case was made out against Pradeep Khanna (husband), Mrs. Pushpa Devi (mother-in-law) and Miss Priyanka (sister-in-law) and on 27.5.1998. But the petitioner sister-in-law has not been arrested and is on interim anticipatory bail.

7. The instances of young wives being killed or otherwise dying unnatural death under suspicious circumstances are alarmingly on the increase. The deceased had married on 15.2.1997 and died within 14 months of her marriage. She was educated and was employed as a Teacher. Unless there are other extraordinary and compelling circumstances the death of a young wife could be either due to

commission of a crime or to the fact that being mentally tortured by the suffocating circumstances surrounding her she committed suicide. A young woman of intelligence, character, education would not welcome the embrace of death unless provoked to that desperate step by the intolerance of her misery. It is notorious fact that there is the deep seated malady in our social order in the form of greed for dowry and cases of dowry deaths or otherwise harassment/cruelty in connection therewith have been on increase by leaps and bounds and quite a large number of such cases are pending in Courts in spite of the fact that some stringent legislation was enacted in recent past to combat this evil.

8. In *Stree Atyachar Virodhi Parishad Vs . Dilip Nathumal Chordia and Anr. :* [1989]1SCR560 the awareness of our legislature in this respect has been noticed as under:

'In 1961 the Dowry Prohibition Act (Act 28 of 1961) was passed prohibiting the taking or giving of dowry. By the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) Chapter XX-A was introduced in the Penal Code with Section 498-A creating a new offence of cruelty. It provides for punishment to husband or his relatives if they harass a woman with a view to coerce her to meet any unlawful demand for property. Section 174 of the Criminal Procedure Code was also amended to secure post-mortem in case of suicide or death of a woman within a period of seven years from the date of her marriage. These provisions reflect the anxiety of the representatives of our people to deal firmly with the menace of dowry deaths. Again, there are sweeping changes made in the Dowry Prohibition (Amendment) Act, 1984. A new offence called 'Dowry death; has been created by introducing Section 304-B in the Penal Code. It raised presumption of culpability against the husband or relative hitherto unknown to our jurisprudence. It provides that where the death of a woman is caused by any burns or bodily injury or 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. The section also provides that such husband or relative shall be deemed to have caused her death and shall be punished with imprisonment for a minimum of seven years but

which may extend to life imprisonment.'

It has been further emphasised by the Supreme Court in this case that:

'It is only to emphasise that it is not enough if the legal order with sanction alone moves forward for protection of women and preservation of societal values. The criminal justice system must equally respond to the needs and notions of the society. The investigating Agency must display a live concern and sharpen their wits. They must penetrate into every dark corner and collect all the evidence. The Court must also display greater sensitivity to criminality and avoid on all counts 'soft justice'.

9. Investigation of such cases are not up to the mark.

10. 'cruelty' is defined in Explanation to Section 498-A IPC as under:

'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.'

11. Learned Counsel for the petitioner has strongly contended that the deceased had committed suicide she being mentally disturbed having not conceived a child; there was no demand of money or other articles and she herself was keeping her salary. He has also contended that where there are two different versions, one exonerating the family members and the other implicating them, the petitioner is entitled to bail.

12. The cases relied on by him are based on their own peculiar facts and circumstances. No two cases generally have same facts and circumstances. Every case should be considered on its own facts and circumstances, taking into

consideration the overall circumstances, material, the background of the relations with the lady and the relations of the husband including the husband and the circumstances giving rise to the death of a young wife and not on a single circumstance, which has not yet been proved, of course such circumstance has to be appraised in the overall circumstances.

13. It is alleged by the learned Counsel that a suicide note was found from the person of the deceased.

14. The original note is in Hindi and on translation reads as under:

'I have no complaint against my husband Pradeep Khanna, Jethani Mamta, Jeth and Papaji. Mentally I am very much disturbed (Parashan). I do not want to live. After my death my dowry articles/goods may be handed over to my parental relations and my in-laws may retain the salary due after marriage. Love to Chetan. (Chetan perhaps is the son of her Jethani).

15. Besides the four persons mentioned in this note the mother-in-laws and sister-in-laws (petitioners herein) were also members of their family living together in the same house with the deceased. This note does not exonerate these two ladies unlike the other four persons. Why the names of these two ladies have been excluded and why there was occasion to write such a note

16. In the statements made by the relations of the deceased on the parental side allegations of harassment/cruelty, beating by or at the instance of these two ladies have been made. In some of the statements it is also alleged inter alia that there was also a demand of car by these two ladies through the deceased. Petitioner is a girl of a marriageable age. The car perhaps might be needed for giving in dowry for her marriage, as is also stated in some of the statements.

17. The parental-relations of the deceased from the very beginning suspect that it was not a simple suicide but was a homicidal death. In some of the statements it is also alleged that these two ladies used to instigate the husband against the deceased. It cannot be said that the allegations are wholly baseless or mala fide.

18. In these circumstances it cannot be said at this stage that the petitioner might not have harassed or committed cruelty towards the deceased and instrumental in driving her to commit suicide.

19. As regards the contention that the deceased could not conceive a child after marriage, no opinion is being expressed on this aspect as it is a matter to be decided by the Trial Court. However, one thing is clear that the marriage had taken place hardly 14 months ago and there is no material available to show that the deceased was incapable of bearing a child.

20. Grant or refusal of bail depends upon variety of circumstances such as the nature of the crime, circumstances giving rise to the offence and the contribution of the accused person(s), its impact on society etc. The power under Section 438 of the code has to be exercised sparingly and in exceptional cases depending upon the facts of each case. It could not be allowed to circumvent the normal procedure of arrest and investigation or to prejudice or thwart the investigation. As already noticed the crime leading to deaths of young wives in their matrimonial homes is quite alarming and soft justice in such cases is detrimental to the interest of the society and it is likely to shake the confidence of the public in the administration of criminal justice. Taking into consideration the facts and circumstances, the material and the nature of the offence, in my view it is neither in the interest of administration of justice nor in the interest of the society to admit the petitioner on anticipatory bail.

21. This application is accordingly dismissed.

22. The petitioner shall surrender to her bail bonds forthwith.

Nothing stated hereinabove shall be taken to be an expression of opinion on the merits of the case.