

Vimlesh @ Kamlesh Vs. State

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Court : Delhi

Decided On : Apr-22-2013

Judge : Kailash Gambhir

Appellant : Vimlesh @ Kamlesh

Respondent : State

Advocate for Def. : Mr. Navin Sharma

Advocate for Pet/Ap. : Mr. Prem Prakash

Judgement :

\$~36 * IN THE HIGH COURT OF DELHI AT NEW DELHI + BAIL APPLN. 116/2013 VIMLESH @ KAMLESH Through: Petitioner Mr. Prem Prakash, Advocate versus STATE Through: Respondent Mr. Navin Sharma, Additional Public Prosecutor for State with Inspector Lekh Raj, Police Station Karwal Nagar, Delhi CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR ORDER 22 04.2013 % 1. By this application under Section 439 of Cr. P.C., applicant seeks regular bail in FIR case being FIR No.183/2012, registered under Section 498-A/304-B/34 of IPC, at Police Station Karawal Nagar, New Delhi.

2. Arguing counsel for the applicant submits that the applicant has been falsely implicated in the present case and she is not a previous convict. Learned counsel also submits that applicant is the mother in law of the deceased and she is an innocent law abiding citizen of this country. Learned counsel also submits that all

the prosecution witnesses examined by the State had turned hostile except the complainant but even in his testimony he has not fully supported the case of the prosecution. Learned counsel also submits that the complainant in his cross-examination clearly stated that he never made any complaint regarding the harassment and demand of dowry against these accused persons prior to the death of his daughter. He has also admitted the fact that there was a cordial relationship between the two families who used to visit each other often. He also deposed in his cross-examination that whenever his in-laws and his son-in-law visited his house, they used to bring fruits for the children. He also admitted that his sister was living in the same vicinity and never made any complaint against the accused persons. He also admitted that on the evening of 28th May 2012 he had stayed at the matrimonial house of his daughter for about two hours and even then he took fruits and other eatable items at their house. Counsel also argued that even in the FSL Report, no poisonous substance could be detected. The said FSL report would clearly show that the petitioner is not involved in the commission of the offences. Counsel also argued that the instance is a plain and simple incident of a train accident. Counsel also argued that on the morning of 29th May 2012, the complainant had visited the matrimonial house of the deceased and his son-in-law had told him that his daughter has already left.

3. Bail application of the applicant is strongly opposed by learned Additional Public Prosecutor for State raising contentions that the complainant has fully supported the averments made by him in his first complaint, on the basis of which this FIR was lodged. Learned Additional Public Prosecutor for State also submits that even the sole testimony of the said witness, who is a prime witness, can result in a conviction of the petitioner. It is also contended by learned Additional Public Prosecutor for State that the complainant in his examination-in-chief clearly deposed that his daughter was being subjected to harassment at the hands of the petitioner for the demand of dowry who usually used to say that *apne dahej kam diya hai, apne baap se aur dahej laa*. Learned Additional Public Prosecutor for State further submits that complainant has mortgaged his agricultural land to marry his daughter so as to give sufficient dowry articles but his daughter informed him that her in-laws used to beat her and harass her for the demand of dowry.

4. Learned Additional Public Prosecutor for State further submits that the said witness had arranged a sum of `50,000/- and handed over the same to the father-in-law of the deceased but after some gap, the petitioner, father-in-law of the deceased, husband of the deceased and Lalit again started harassing the deceased demanding more dowry. The said witness also deposed that being a poor fellow he showed his helplessness to arrange more money to give to the accused person. He also deposed that on 28th May 2012, he had visited Delhi to attend terahvi of his brother in law, where he met his daughter and son-in-law and at their request he had also visited his house where he found that all the four accused persons were quarrelling with his daughter. He also deposed that he requested to the accused persons, not to quarrel with his daughter and not to harass her for demand of dowry. He also deposed that at the morning of 29.05.2012 he went to matrimonial home of his daughter to bring her back with him and then his son-in-law Lalit informed that she has already left from there. Thereafter he returned back and started searching for his daughter alongwith his family members and on 1.6.2012, after having visited Shahadara Railway Station, he was informed by some petty shop owner that one dead body of the lady was lying on the railway track.

5. Learned Additional Public Prosecutor for State submits that in the post-mortem report some anti-mortem injuries have been shown and these injuries have yet to be explained by the doctor as his examination has not yet been started.

6. Based on the above submissions made by learned Additional Public Prosecutor for State submits that looking at the gravity of the offence and the deceased having committed suicide within a period of two years from the date of her marriage and there being specific allegation against the petitioner, who had raised a demand of `50,000/- from the complainant, the petitioner does not deserve grant of bail.

7. I have heard the learned counsel for the parties and have also perused the relevant record.

8. At the time of considering the application for grant of bail, the Court has to take into account the nature and gravity of the offence, severity and punishment. The

Court has also to look into the aspect as to whether the accused has roots in the society or there is a chance of his/her fleeing from justice, if released on bail. Not only that, the Court has also to keep in mind as to whether there is any reasonable apprehension of the witnesses being influenced or evidence being tampered with or the course of justice being thwarted, if bail is granted to the accused.

9. In the present application, It is alleged by the complainant that he gave dowry articles more than his capacity at the time of marriage. However, immediately after the marriage, deceased Kiran, his daughter was subjected to demand of dowry and consequent harassment and cruelty by her husband and other family members including the petitioner, Smt. Kamlesh also.

10. It has been further alleged that Smt. Kamlesh @ Vimlesh is the mother in law of the deceased, 'Kiran', daughter of the complainant. The accused / applicant Vimlesh @ Kamlesh was specifically named by the complainant alleging dowry demand, harassment and torture to the deceased by the applicant/ accused. It is also alleged that on one particular occasion, a sum of Rs. 50,000/- was also given in cash by the complainant to his daughters father in law in order to ensure that his daughter lives peacefully and also conveyed that the complainant was left with nothing to pay any further. However, the complainant has alleged that even thereafter, the accused persons used to harass the deceased daughter of the complainant but he could not help her. It is further alleged that it is due to this gruesome behaviour of the petitioner and her family members, that the complainants daughter left with no other option but to commit suicide.

11. One cannot snuff its cord from the fact that the deceased expired within less than two years of her marriage, and also that none of the family members including the petitioner ever approached the complainant informing them about the deceased being missing from their residence. It is when the complainant went to the house of the in-laws of her daughter on 29.05.2012 to bring her back to the parental house, the son in law of the complainant told him that the daughter had already left and thereafter, the complainant started searching his deceased daughter and on 01.06.2012 found that she was lying dead near the railway track, Shahadara.

12. Vide order dated 04.01.2013 , learned Sessions Judge has dismissed the application of the petitioner for grant of bail on an account, that the contention raised by the accused in the application that the minor child of the deceased has to be looked after only by the applicant has no sustenance because till date also minor child is being maintained by someone and if no arrangement has been made , parents of the deceased who are willing to look after the child, should be allowed to do the same and since the material witnesses have not yet been examined, there is no ground to grant bail to the applicant at this stage.

13. Taking into consideration the overall conduct of the petitioner and also considering the seriousness of the allegations levelled against the petitioner, I am of the view that the learned ASJ has very aptly decided the earlier bail application filed by the petitioner, as the case is at a trial stage and material witnesses are yet to be examined. Therefore, in the interest of justice, it would be appropriate to dismiss the present bail application being devoid of any merits. The same is accordingly dismissed. KAILASH GAMBHIR, J APRIL 22 2013 pkb

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