

Rajvati vs State Of Nct Delhi on 21 February, 2023

Author: Amit Sharma

Bench: Amit Sharma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 3495/2022
RAJVATI

Through: Ms. Yashaswi SK Choc
Mr. Ankit Singh and
Sagar, Advocates.

versus

STATE OF NCT DELHI

Through: Mr. Aman Usman, APP
with Insp. Sanjay Ku
Bindapur.
Complainant in perso

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA
ORDER

% 21.02.2023

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeks grant of regular bail in case FIR no. 747/2022, dated 25.10.2022, registered at PS Bindapur, for offences under Section 498A/304B/34 of the Indian Penal Code, 1860 ('IPC').

2. Briefly stated, the case of the prosecution is as under:

i. On 23.10.2022, a PCR call was received at PS Bindapur, Delhi, stating that a woman was found hanging at RZ-Q-95, 2nd Floor, Gali no. 3, Bhagat Enclave, Uttam Nagar, New Delhi. On reaching the spot, the in-laws of the deceased were allegedly found to be present there and the body was lying on the ground.

ii. Upon enquiry, it was allegedly informed by the husband of the deceased that he found his wife hanging to the ceiling fan with a dupatta (chunni). On seeing the same, he allegedly broke into the room and with the assistance of his sister, he laid down the deceased on the ground and removed the cloth from around her neck. It was further revealed by the husband of the deceased during investigation that he got married to the deceased, namely Priti, on 14.06.2020. Since the same was less than seven years, therefore, SDM and Crime Team were informed about the same. After inspection, body of the deceased was sent to DDU Hospital, wherein the doctor

declared her to be 'brought dead', vide MLC no. 9599/22.

iii. Thereafter, the statement of the deceased's parents, i.e., Mr. Jagan Prasad and Ms. Amravati, was recorded by the SDM. In the said statement, it was alleged by the father of the deceased that the father-in-law of his daughter used to constantly ask for dowry. It was further alleged that at the time of marriage, the father-in-law of her daughter asked for Rs. 5,00,000/- as dowry, out of which he paid Rs. 3,00,000/- at that time and stated that he would pay the remaining amount later. Further, he alleged that a day prior to the incident, his daughter informed his wife that everything was fine at her end. iv. In his statement, he further alleged that the in-laws of her daughter have killed his daughter and have made it look like suicide, due to non-payment of remaining amount, i.e., Rs. 2,00,000/-. v. Consequently, on the basis of the statement and on direction of the learned SDM, FIR no. 747/2022, for offences under Sections 498A/304B/34 IPC, was registered at PS Bindapur. vi. In the post-mortem report, the cause of death was opined to be "asphyxia caused by ligature hanging. Manner of death appears to be suicidal."

vii. In his statement under Section 161 of the CrPC, father of the deceased, reiterated the facts which were earlier recorded by him in his statement before the SDM. However, he further alleged that his daughter used to often tell him and his wife about her in-laws and husband asking for the remaining amount and used to scold her whenever she denied the payment of the same .

viii. Thereafter, on 25.10.2022, the father-in-law/Rakesh Kumar, husband/Sandeep Kumar, and mother-in-law/Rajvati/present applicant were arrested.

ix. After completion of the investigation, chargesheet was filed in the Court of Ms. Deeksha Sethi, learned Metropolitan Magistrate, Dwarka Court, for offences under Sections 498A/304B/34 IPC. Charges have not been framed in the present matter.

3. The learned counsel for the applicant submits that the FIR has been registered at the instance of the father of the deceased, who in his statement has alleged that the demand was made by the father-in-law of the deceased only, and no specific allegation with respect to the present applicant, who is the mother-in-law of the deceased, has been made. It is further submitted that no allegation qua the present applicant has been made that the deceased was subjected to cruelty or harassment at the hands of the present applicant. Further, a general allegation has been made against the present applicant and her son that the alleged incident was committed in connivance with each other. The learned counsel further asserts that it has been stated by the complainant himself in the FIR that his daughter talked to his wife a day prior to the incident and there was no mention of duress by her. Since, the role of the present applicant has not been enumerated in the FIR with regard to commission of the offence, therefore, no case under Section 304B of the IPC is made out. In furtherance of his submission, the learned counsel relied upon the following judgments:

a. Patil Prakash Kumar Jayanti Lal v. State of Gujarat, 2000 CrL. L.J. 223 (GUJ) b. Devender Singh & Ors. v. the State of Uttarakhand (Criminal Appeal no. 383 of 2018)

4. It is further submitted that there is material improvisation in statement of the complainant recorded under Section 161 of the CrPC, on which the Status Report is based upon. He further asserts that the prosecution story has neither been corroborated by any medical evidence, nor have any incriminating evidence been collected by the Investigation Officer, against the present applicant. It is further urged that no complaint regarding physical or mental cruelty, for non-fulfilment of demand of additional dowry, has been made against the present applicant. Thus, no offence under Section 498A of the IPC is made out either. It is further urged by learned counsel appearing on behalf of applicant that the latter was not living with her son and deceased at the time of incident, and in support thereof, the Aadhar Card of the present applicant, has been placed on record, which shows her address to be of Aligarh, Uttar Pradesh.

5. It is submitted that the present applicant has been in judicial custody since 25.10.2022, and there are no reasonable ground for continual incarceration. He further asserts that seriousness or gravity of the offence cannot be the sole parameter for curtailing the liberty of the applicant. The learned counsel relied upon the following judgments:

a. Sanjay Chandra Vs. CBI, 2012 (1) SCC 14 b. Shivani Rajiv Saxena Vs. Enforcement Directorate (Bail Application No. 2164 of 2017 dated 15.12.2017) c. D.K. Shivkumar Vs. Enforcement Directorate, 2019 (264) DLT 586 d. P. Chidambaram Vs. Enforcement Directorate, 2019 SCC Online SC e. P. Chidambaram Vs. CBI, 2019 SCC Online SC 1380 f. Upender Rai Vs. E.D. - (2019) 262 DLT 382 g. Gurbaksh Singh Sibbia Vs. State of Punjab, (1980) 2 SCC 565 h. Gurcharan & Others Vs. State, AIR 1978 SC 179 i. Babu Singh Vs. State of U.P. - (1978) 1 SCC 179 j. Anil Mahajan Vs. Commissioner of Customs, 2000 CrL. L.J. 2094, k. Anoop Prakash Garg Vs. Enforcement Directorate, 2018 SCC Online Del 10287 l. Rohit Tandon Vs. Enforcement Directorate, 2018 SCC Online Del 8873.

m. Mahender Chawla Vs. Union of India, 2018 SCC Online SC 2679 n. Parwati Devi Vs. State of Bihar, 2021 SCC Online SC 1285

6. The present application is vehemently opposed by the learned APP for the State on the ground that charges have not been framed till now. It is further asserted that the statement of witnesses have also not been recorded, therefore, there is a possibility of applicant tampering the evidence or threatening or influencing the witness.

7. It is further urged by the learned APP for the State that all the ingredients of Section 304B of the IPC are made out in the present case and specific allegations of demand of remaining amount of Rs. 2,00,000/- by the in-laws of the deceased, including the present applicant, has been made by the family members of the deceased.

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

9. A perusal of the statement made by the father of the deceased before SDM, and subsequent statement recorded under Section 161 of the Cr.P.C., would reflect that apart from one general allegation, no specific overt act has been attributed with respect to the present applicant. In the subsequent statement of the complainant under Section 161 of the Cr.P.C., it is stated that deceased used to tell the complainant and his wife that her husband and in-laws are demanding remaining dowry amount.

10. The present applicant has been in judicial custody since 25.10.2022, and the chargesheet stands filed.

11. The plea of the prosecution with regard to the present applicant threatening or influencing the witness or tampering the evidence, if released on bail, is not substantiated by way of any material placed on record. No useful purpose will be served by keeping the present applicant in judicial custody.

12. In totality of the facts and circumstances of the case, the application is allowed. The applicant is directed to be released on bail on her 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 the following conditions:

i. The memo of parties shows that the applicant is presently residing at RZ-Q-95, Bhagat Enclave, Uttam Nagar, New Delhi. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer. ii. The applicant shall not leave India without the prior permission of the learned Trial Court.

iii. The applicant is directed to give all her mobile numbers to the Investigating Officer and keep them operational at all times. iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.

v. The applicant shall join the investigation, as and when required by the Investigating Officer.

vi. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled forthwith.

13. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.

14. The application is allowed and disposed of accordingly alongwith all the pending application(s), if any.

15. Order be uploaded on the website of this Court, forthwith.

AMIT SHARMA, J FEBRUARY 21, 2023/bsr