

Urmila Srivastava vs State on 3 December, 1998

Equivalent citations: 1998VIIAD(DELHI)517, 77(1999)DLT222, I(1999)DMC253, 1999(48)DRJ676

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Bench: J.B. Goel

ORDER

J.B. Goel, J.

1. This is a petition under Section 438 Cr.P.C. for anticipatory bail. The petitioner is the mother-in-law of the deceased.

2. Briefly, the facts are that the deceased Amita was married to Pradeep, son of the petitioner on 23.1.1998 at Allahabad where the parents of both the parties are residing. The deceased had died an un-natural death on 10.7.1998 alleged to have committed suicide by hanging at house No. J-1/195, DDA Flats, Kalkaji, New Delhi where she was living with her husband. After receipt of information of her death her father Shri Suryadev Srivastava and mother Smt. Meera came to Delhi and made their statements before the S.D.M. Shri Sanjay Pandey to the effect that they had given good dowry in the marriage of her daughter spending about Rs. 4 lakhs, substantial amount of which was given in cash. But her in-laws were not satisfied with the same and from the time of marriage her in-laws had started expressing dis-satisfaction and annoyance on the ground that the dowry given was inadequate; the deceased had gone to their house on 9th February, 1998 when she had told them about being harassed on account of inadequate dowry and that she was also even being given beatings; earlier to that her father had gone to bring the deceased when in his presence the husband and mother-in-law had caught the deceased from her hairs, dragged her outside and abused him also. The deceased stayed with them upto 24th April, 1998, and then she lived in her matrimonial home at Allahabad for about one month when she came with her husband to Delhi on 25th May, 1998 and lived at House No.J-1/195, Kalkaji. Her father had tried to contact the deceased on telephone from Allahabad but he could not. Her parents had got seats reserved in a train for coming to Delhi for 13th July, 1998. But, in the meantime, they were informed on 10th July, 1998 in the night about the death of the deceased. It is alleged that the deceased was intelligent girl and would not have committed suicide but her husband and mother-in-law had harassed and tortured her being dissatisfied on account of dowry, taunted her and thereby compelling her to commit suicide. They desired that action be taken against them. On the basis of the statement of her father FIR was registered for offences under Section 498-A/304-B IPC.

3. Similar statements were also made by them to the police. The husband of the deceased was arrested but the petitioner has not been arrested as in the meantime first she approached the Sessions Court for anticipatory bail which was rejected on 21.8.98 and then she has approached this court.

4. Learned counsel for the petitioner has inter alia referred to some photographs of the deceased with her in-laws (perhaps taken soon after the marriage when they had gone for holidays) and some letters written by the deceased to her husband to show that there was quite cordial relations between the deceased and her husband and her in-laws; and she had not complained in any of letters to her parents also about demand or harassment on account of dowry or in connection with inadequate dowry; it is also contended that the deceased has left behind a suicide note where also she has not made such allegations against them and rather she has stated that she was committing suicide of her own exonerating all her in-laws of any cause of harassment which shows that she had died of her own and perhaps due to some depression; that the petitioner is an old and sick lady, has been living at Allahabad, and not living with or visited the deceased and her husband at Delhi after they had shifted to Delhi in May, 1998. In these circumstances, no case is made out against the petitioner. Reliance has been placed on some case law.

5. Learned counsel for the State has strongly opposed the bail application. She has contended that the deceased had died within six months of her marriage, the parents of the deceased have made allegations that the deceased was being harassed from the time of the marriage in connection with inadequate dowry and was even being given beatings and herwise tortured. The suicide note itself shows that it is the voice of a harassed and oppressed wife and there was no other reason for her committing suicide; she was a cheerful, ducated, intelligent and dutiful wife. In the circumstances there is no reason to disbelieve the statements made by her parents. Even otherwise the death has taken place within six months of the marriage and in-laws of the deceased have not shown any other circumstances under which the deceased has died an un-natural death. The offence is grave and serious. The allegations made against the petitioner cannot be said to be mala fide or motivated. Had it been so, the father-in-law and other in-laws of the deceased would also have been implicated. The alleged illness of the petitioner is neither so grave nor she is bed-ridden and the photographs of petitioner available on record show that she is quite healthy and hale and hearty. Taking into consideration the gravity and seriousness of the offence there is no reason to admit her to anticipatory bail on this ground nor it is a relevant consideration under Section 438. There is no reason to thwart investigation and shut out the police to gather relevant information from the petitioner by custodial investigation.

6. Learned counsel for the petitioner inter alia has relied on Meka Ramaswami Vs. Dasani Mohan & Ors. 1998 1 ADR SC 86 and Shyam Lal Vs. State of Haryana . Both these decisions were given in appeal after trial and obviously the question of grant of anticipatory bail was not involved. In the case of Meka Ramaswami the courts had disbelieved the version of the father of the deceased about the deceased having committed suicide as a result of cruelty practised by the respondents on account of demand of dowry from her and her father. Similarly, in Shyam Lal's case on trial it was held that there was no evidence that deceased was treated with cruelty or harassed for demand of dowry soon before her death after she was taken back to the matrimonial home after Panchayat was

held to resolve the dispute 10 to 15 days prior to the occurrence. Raman Mahajan Vs. State 1994 JCC 540 (Delhi) is also a case under Section 439.

7. Scope of Section 438 Cr.P.C. has been considered in Pokar Ram Vs. State of Rajasthan where it was stated as under :

"Relevant considerations governing the court's decision in grant-

ing anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal."

Similar observations have been made in CBI Vs. Anil Sharma as under :

"Consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest".

8. These two cases have been followed in a recent case of The State of Andhra Pradesh Vs. Bimal Krishna Kundu & Anr. , where also it has been further held that :

"There is no indication in Section 438 of the Code for justifying a hiatus to be made among non-bailable offences vivisectioning those punishable with death or imprisonment for life and those others punishable with less than life imprisonment. No doubt such a classification is indicated in Section 437(1) of the Code, but that Section is concerned only with post-arrest bail and not prearrest bail."

Disapproving the order of the High Court granting anticipatory bail in that case the Hon'ble Supreme Court has observed that :

"... It is disquieting that implications of arming respondents, when they are pitted against this sort of allegations involving well orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence..."

9. In Samunder Singh Vs. State of Rajasthan the Hon'ble Supreme Court in a dowry death case has disapprovingly noticed the grant of anticipatory bail by the High Court by observing as under :-

"The widespread belief that dowry deaths are even now treated with some casualness at all levels seems to be well grounded. The High Court has granted anticipatory bail in such a matter. We are of the opinion that the High Court should not have exercised its jurisdiction to release the accused on anticipatory bail in disregard of the magnitude and seriousness of the matter. The matter regarding the unnatural death of the daughter-in-law at the house of her father-in-law was still under investigation and the appropriate course to adopt was to allow the concerned Magistrate to deal with the same on the basis of the Material before the Court at the point of time of their arrest in case they were arrested. It was neither prudent nor proper for the High Court to have granted anticipatory bail which order was very likely to occasion prejudice by its very nature and timing. We therefore consider it essential to sound a serious note of caution for future. The High Court is under no compulsion to exercise its jurisdiction to grant anticipatory bail in a matter of this nature."

10. It is thus clear that the anticipatory bail is to be granted with circumspection and so as not to interfere in the investigation of the case by the police and also taking into consideration the interest of the society.

11. The facts in the present case show that the marriage had taken place on 23.1.1998 and the deceased lived at her matrimonial home upto 9th February, 1998, her father had visited her in her matrimonial house shortly after marriage and seen with his own eyes the deceased being maltreated by her mother-in-law and husband; thereafter she was taken to her parental home where she had told her parents about harassment by her in-laws being not satisfied with her dowry. She lived with her parents upto 24.4.1998 i.e. for 2-1/2 months which is apparently an unusual circumstance as a newly married girl would not have stayed at her parents house for such a long time soon after the marriage except in some abnormal circumstances. The parents of the deceased have alleged that inter alia the petitioner was not satisfied with the dowry presented, she used to taunt and harass the deceased. The deceased has died an un-natural death and under suspicious circumstances within six months of her marriage. There is nothing to show any other circumstance which may have impelled her to take the extreme step of committing suicide. As appears from her letters the deceased seems to be well educated, considerate and had great love and affection for her husband. In such circumstances there was apparently no other reason for ending her life except possibly due to unbearable harassment and cruelty at the hands of her in-laws as alleged by her parents. The evil of dowry is well known and has spread like cancer in the Indian society. Daily we are coming across 20 to 30 per cent cases of harassment and cruelty on the new wives by their in-laws for dowry demands or expectations; deaths due to bride burning and murders for that reason. The law seems to have not shown its effectiveness as it was expected. Soft justice has to be avoided in such cases.

12. Strong reliance has been placed on the letters written by the deceased to her husband showing love and affection by her for her husband. Apparently, this loving gesture was one sided without corresponding reciprocation from her in-laws side. Had it been so there would have been no occasion for the deceased to have committed suicide so soon after marriage.

13. Reliance has also been placed on the suicide note addressed to her husband by the deceased, copy of which has been placed on record (Page 40 copy in Hindi and Page 41 English translation). Broadly the English translation of the suicide note would read as under :-

"Now, I have no attachment with this world and I truly love you.

I love you and I will be loving you. Now you all are free to lead your own life comfortably mother and father. Love to Alok, Anup, Cipu from their sister-in-law. Inform my parents also. I love you. I love you. Do not treat it as a suicide but treat it as a meditation for salvation. Lot of love to you Pradeep. Lot of love to you..

Your wife Amita/Rink 10.7.98"

14. This suicide note will be considered and evaluated by the trial court during trial. The learned Sessions Judge while rejecting bail application of the petitioner under Section 438 has considered it. It shows that in spite of great love and affection she had for her husband she had taken this extreme step, apparently it could be she being immensely oppressed by adverse circumstances faced in the matrimonial house which had impelled her to distance herself permanently from her in-laws by taking this extreme step. This note as contended by learned counsel for the State could be the voice of a helpless, harassed and oppressed young wife who thought solace in death than living a distressed life with her in-laws.

15. It has also been contended that the petitioner was not living with the deceased at the time of her death and as such she would not be liable under Section 304B IPC. It is a matter to be found out during investigation. At this stage it cannot be said with certainty whether and when the petitioner may have visited and stayed with the deceased. There are allegations of harassment and cruelty on account of dissatisfaction for dowry given to and expected from the deceased and this is an offence under Section 498-A IPC.

That provision is enacted to meet such situations.

16. Section 438 Cr.P.C. was enacted to grant anticipatory bail in cases where malicious and false prosecution are launched by unscrupulous strong/powerful persons to harass and humiliate their opponents and not where prima facie there is material to show that a serious non-bailable offence has been committed. It is not possible to say at this stage that the allegations made by the parents of the deceased are malicious, baseless or motivated.

17. Illness of the petitioner in itself would not be a ground to thwart the process of law and interdict in proper investigation especially in such a serious offence. Moreover, the illness is not so serious and the petitioner is not bed-ridden. Each case has to be seen in the light of its own facts and circumstances. There is no reason to circumvent the normal course of law by granting anticipatory bail.

18. The other cases relied are based on their own facts.

19. The learned Sessions Judge has considered the facts and circumstances of the case and has not found it a fit case for grant of anticipatory bail. There seems to be no illegality or infirmity his approach. I also do not find any valid ground to admit the petitioner to anticipatory bail. This petition is accordingly dismissed.

20. The interim bail is hereby rejected. Nothing stated herein shall be deemed to be expression of opinion on merits of the case.