

State vs Daya Devi on 21 April, 2010

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IN THE COURT OF SHRI RAJ KUMAR CHAUHAN
ADDITIONAL SESSIONS JUDGE:TIS HAZARI COURTS:
(WEST) DELHI

FIR no . 324/09
U/s 498 A/304 B/34 IPC
Police Station. Janak Puri
State V/s Daya Devi

Order on Bail Application

Present : Ld. APP for State.
Ld. Counsel for the applicant /accused.

By this order , I shall dispose of the bail application of accused Daya Devi who has sought anticipatory bail on the ground that she is old-aged lady about 72 years old and is permanent resident of Haryana ; suffering from heart disease and receiving continuous treatment for the same. ; she has never made dowry demand from the deceased or her family members ; the deceased from the very beginning was under depression and used to make quarrels and became more violent and aggressive towards her husband ;the deceased has got miscarriage of child because of her mental situation and her mental condition after mis carriage of the child deteriorated ; the applicant as well as her son co accused Dilbagh Singh husband of the deceased has sent her to her parental house in the end of November, 2009, so that she may recover from the shock of miscarriage of the child and depression ; Due to depression the deceased committed suicide on 30.12.2009

by hanging herself at her parental house; the mother of the deceased has made a false statement against the applicant and her her son on which the present case FIR was registered. There is no allegation against the petitioner even in FIR for demand of dowry ; she has never caused harassment or torture to the deceased for demand of dowry as such no offence under section 498 A or under section 304 B IPC was attracted . The petitioner had been living in her village far away from the matrimonial house of the deceased and had never resided with the deceased because the deceased was working as a lecturer in Kamala Nehru College , Delhi and applicant's son was working as section officer in Ramjas college, Delhi.

2 It is further stated that husband of the deceased namely Dilbagh Singh son of the applicant has approached the Hon'ble Supreme Court of India and his arrest has been stayed vide order dated 5.4.2010. Hence, the applicant has prayed for grant of anticipatory bail in the event of her arrest.

3 In reply to the bail application , the Investigating officer has stated that the brief facts of the case is as follows :

Gayatri Devi mother of the deceased has got registered the case FIR , alleging that her daughter Menu was got married to Shri Dilbagh Singh according to Hindu rites and ceremonies on 18.4.2009 at Delhi. The complainant has stated that her daughter Meenu told her that she was being harassed and her husband Dilbagh Singh was demanding dowry . Her husband Dilbagh Singh was demanding a flat in Janak Puri . The daughter of the complainant was compelled to leave the matrimonial home due to persistent dowry demands and beatings by her husband and as such deceased Meenu started living with her parents due to cruelty committed by her husband Dilbagh Singh and her mother in law. About one week before, Dilbagh Singh visited the house of the complainant and used filthy language against Meenu in front of her parents and further threatened that he will not keep her as his wife . After that her daughter Menu started remaining silent and stopped interacting with the other family members . On 30.12.2009 at about 9.00 pm when the complainant returned home from the temple she found that the room of her daughter was locked from inside . The complainant knocked the door but no response was received from inside . Thereafter, the complainant , the mother of deceased informed her husband Durga Parsad and also called her brother Om Narain who opened the door forcefully and found that Meenu was hanged with the ceiling fan with the help of Red saree. The body of deceased Menu was rushed to DDU hospital where she was declared dead . The police was informed from the hospital and the SDM deputed Shri R.K Saini, Tehsildar who reached at the hospital and recorded statement of parents of the deceased. During investigation , the statements of relatives of deceased Menu have been recorded . One hand written statement of Dilbagh Singh dated 19.6.2009 and one hand written statement of deceased Meenu dated 28.6.2009 and marriage photographs have been collected from Shri Vivek Kumar, brother of the deceased. During course of investigation , an information regarding quarrel between deceased and her husband Dilbagh Singh had been collected from police station Maurice Nagar .

4 In the report, it is further stated that from the hand written statement of Dilbagh Singh husband of the deceased dated 19.6.2009 collected from Vivek Kumar, brother of the deceased and DD entries recorded in the police station Maurice Nagar, the physical cruelty committed by Dilbagh Singh is noticed. In the hand written statement dated 28.6.2009, deceased Meenu has specifically mentioned that she had been tortured by her husband Dilbagh Singh and further stated that she had been harassed for dowry by her mother in law (applicant) and her husband. In the said hand written statement the deceased further specifically stated that if she commits suicide then her husband Dilbagh Singh shall be responsible for her said act because he has been causing immense physical and mental torture to her . The deceased has further stated that her mother in law was continuously demanding dowry.

5 It is further stated that accused persons including applicant are absconding and not joining the investigation . In case the applicant is granted anticipatory bail, she would tamper with the prosecution evidence. 6 Ld. Counsel for accused /applicant has argued that there is no allegation of cruelty and torture against the applicant by the deceased; the applicant being an aged lady is living

in Haryana at Village Kalana, District Sonipat and had never resided with the deceased and was having a separate ration card at village address and had been receiving the ration from the ration shop. ; she has been falsely implicated by the family members of the deceased 7 It is further argued that in the given facts and circumstances, the accused /applicant be released on anticipatory bail as she is ready to abide by any terms and conditions to be imposed upon her for joining investigation in this case. At the end , Ld. Counsel for accused /applicant has submitted that even at the parity with the main accused, husband of the deceased whose arrest has been stayed by the Hon'ble Supreme Court, the arrest of the accused /applicant be also stayed till disposal of the SLP of the main accused, husband of the deceased by Hon'ble Apex Court.

8 Ld. APP for State assisted by Ld. Counsel for the complainant has opposed the bail application on the ground that there are specific allegations for demand of dowry by accused /applicant who is mother in law of the deceased; the handwriting of the deceased and her husband is collected during investigation of this case. The said hand writing is written /scribed by the deceased. In the writing dated 28.6.2009 , the deceased has clearly stated that her husband was torturing her for not fulfilling his demand of dowry and has been behaving like a mad with her by calling her to purchase a house for him; she has also stated that her mother in law Daya Devi was also abusing her in that regard.

9 Ld. APP for State further pointed out that in the statement recorded by Executive Magistrate , mother of the deceased has specifically stated that husband of her daughter and her mother in law used to abuse Meenu (deceased) and because of domestic quarrel Menu started living in her parent's home for last about one month . It is further alleged in the statement of Gayatri that the husband and mother in law of her daughter used to threaten that they would kill her brother. 10 Ld. APP for State further pointed out that similarly in the statement of brother and father of the deceased , the allegations of harassment and torture by the husband and mother in law of the deceased has been mentioned. 11 Ld. APP for State further argued that in her handwritten note the deceased has specifically mentioned that applicant /her mother in law used to ask her to bring one more almirah as dowry and had never treated deceased Meenu in a good manner.

12 Ld. APP for State further argued that the deceased Meenu has died in unnatural circumstances within 8 months of her marriage with son of the applicant and as such case offence U/s 304 B IPC is attracted against the applicant .

13 Ld. APP for State assisted by Ld. Counsel for the complaint has referred and relied upon the following cases :

1)Adri Dharan DasVs State of West Bengal reported as II (2005) SLT 64 SC wherein it was held as under :

Para 19 : Ordinarily , arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive , preparation , commission and aftermath of the crime and the connection of other persons, if any, in the crime . There may be circumstances in

which the accused may provide information leading to discovery of material facts . It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance to maintain law and order in the locality. For these or other reasons, arrest may become inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under section 438 of the code. The role of the investigator is well defined, and the jurisdictional scope of interference by the Court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of accused in a cognizable offence . An interim order restraining arrest, if passed while dealing with an application under section 438 of the Code will amount to interference in the investigation, which cannot at any rate, be done under section 438 of the Code.

2)In Ram Badan Sharma Versus State of Bihar reported as 2006 (4) RCR (criminal) Page 104 wherein it was held as under :

Para 42 : This Court in Hem Chand Vs State of Haryana 1994 (1) RRR 542 : (1994) 6 SCC 727 dealt with the basis ingredient of section 304 B IPC and Section 113 B of the Evidence Act. This Court , in this case , observed as follows :

"A reading of Section 304B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death which took place within seven years of the marriage, the deceased had been subjected by such person , to cruelty or harassment for or in connection with demand for dowry. If that is shown then the Court shall presume that such a person has caused the dowry death . It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption,he is deemed to have committed the dowry death if there were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under section 113 B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before her death caused the dowry death if it is shown that before her death such woman has been subjected by the accused , to cruelty or harassment in connection with any demand of dowry . Practically this is the presumption that has been incorporated in section 304 B IPC also. It can therefore be seen that irrespective of the fact whether the accused had any direct connection with the death or not , he shall be presumed to have committed dowry death provided the other requirements mentioned above are satisfied . "

3)In Balbir Singh Vs State of Punjab reported as 2006 (1) RCR (Criminal 746 Punjab & Haryana High Court wherein it was held as under:

Para 28 : It is also settled that if the death of a woman takes place in unnatural circumstances within seven years of her marriage , it may be suicidal or homicidal , it would be dowry death . Reference may be made to the judgments of the Hon'ble Supreme Court reported as K. Prena S. Rao Vs Yadla Srinivas Rao 2002 (4) RCR (Crl) 697 (SC) : (2003) 1 SCC 27 and Satvir Singh Vs State of Punjab (2001) (4) RCR (Crl) 355 (SC) : (2001)8 SCC 633. Therefore, even when Baljinder Kaur has committed suicide , it would amount to dowry death in the circumstances proved in this case.

4) In Sandeep VS State of Rajasthan reported as 2008Crl L.J (NOC) 346 (Raj) wherein it was held that " power under section 438 Cr. PC is to be exercised only in exceptional case where it appears that the person may be falsely implicated . If deceased in suicide note had expressed about harassment caused by husband and in laws and as a result of which she is said to have committed suicide . In these facts and circumstances , it cannot be said that the petitioner / husband had no connection with the commission of crime and anticipatory bail cannot be granted.

14 While relying above case laws, Ld. APP for State assisted by Ld. Counsel for the complainant vehemently argued that in these facts and circumstances there are no grounds for grant of anticipatory bail to the accused or to stay her arrest because in that case the investigation will be hampered and prosecution evidence is likely to be tampered with .

15 I have considered the rival submissions made at bar and gone through the facts of the case . Admittedly, deceased Meenu has died within 8 months of her marriage with the son of the applicant /complainant . As discussed above , there are allegations of harassment , by using abusive language by applicant to the deceased and demand of dowry by her as mentioned in the hand written statement of deceased dated 28.6.2009.

16 Considering the totality of the circumstances especially the gravity of the allegations and seriousness of the matter , in case , the accused /applicant is granted anticipatory bail, there is every likelihood that investigation by police is likely to be hampered and accused /applicant may tamper with the prosecution evidence . Because of the above reasons, I am not inclined to release the accused on anticipatory bail. The application is accordingly dismissed.

(RAJ KUMAR CHAUHAN) ADDITIONAL SESSIONS JUDGE SPECIAL JUDGE: (NDPS)
(WEST)DELHI/21.4.2010