

Manju Devi vs State on 6 July, 2020

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Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 01.07.2020

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+ BAIL APPLN. 1312/2020 and CrI. M.A. 7861/2020

MANJU DEVI

.....Applicant

Through: Mr. Himanshu Kaushik, Advocate

versus

STATE (GNCTD)

.....Respondent

Through: Mr. Herien Sharma, APP

Mr. Avadh Kaushik, Advocate for
Complainant

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. Present Petition has been filed under Section 438 Cr.PC, read with Section 482 Cr.PC seeking Anticipatory Bail in FIR No. 555/2019 under Sections 304B/498A/34 IPC read with Section 4 of the Dowry Prohibition Act, 1961, registered at PS Khajuri Khas and for setting aside Order dated 02.06.2020 passed by the learned ASJ in rejecting the application of the Applicant for grant of anticipatory bail.

2. Applicant is the mother-in-law of deceased Abha Singh, daughter of Jitender Prasad and Geeta Devi. FIR was registered on the basis of a complaint by the mother of the deceased, Smt. Geeta Devi.

3. The case of the prosecution is that on 18.10.2019, a PCR call was received regarding hanging by a lady in Dayalpur. During inquiry, it came to notice that deceased Abha Singh was married with Abhimanyu Singh in the year 2017. The SDM was informed accordingly. On 19.10.2019, the mother and father of deceased Abha Singh reached Delhi from Bihar and their statements were recorded before the Executive Magistrate. In the statement of the complainant, it was alleged that her

daughter Abha Singh was being harassed and tortured by her husband and in-laws. Thereafter, the case was registered and investigation was taken up.

4. Learned counsel for the Applicant submits that on 05.02.2017, the son of the Applicant, namely, Abhimanyu Singh married deceased Abha. It was an arranged marriage. Family of the Applicant is an educated and reputed family and therefore, even at the time of marriage, there was no demand of dowry and nothing was taken from the family of the deceased. Learned counsel submits that since the time of marriage, deceased was leading a happy married life. Relations between the Applicant and the deceased were very cordial and the Applicant treated the deceased as a daughter and not as a daughter-in-law. Likewise, the deceased also treated the Applicant as a mother and both mutually showered love and affection on each other.

5. Learned counsel further submits that the deceased was a practicing lawyer at Tis Hazari Court in Delhi. She was well educated and was aware of all her legal rights. Had she been facing any problem in the matrimonial home or was being harassed for dowry, she would have definitely made a complaint and invoked the legal machinery, to enforce her legal rights. However, prior to the incident of suicide by the deceased, no complaint was ever filed by her against any of the family members of the Applicant or the Applicant. Learned counsel submits that at the time of the incident, Applicant was not present in the house and was in routine, attending Yoga classes, nearby. The allegations that the Applicant demanded Rs.3 Lakhs from the parents of the deceased for purchase of a flat, are on the face of it false, since no flat can be purchased for a sum of Rs.3 Lakhs, looking at the high value of property these days and the parents of the deceased have not been able to produce any receipt, showing that they had booked any flat.

6. Learned counsel submits that the Applicant did not have any reason to demand any money from the deceased, or her family, as her son is into part time business with Amazon, an online shopping platform, and is earning a handsome amount every month. Learned counsel argues that the Applicant has been falsely implicated only because she is the mother- in-law of the deceased.

7. Learned counsel contends that the Applicant is 64 years of age and is suffering from various medical ailments. He submits that the deceased has left behind a minor child, aged 2 years and there is nobody in the house to look after the child, except for the Applicant. It is further submitted that the co-accused i.e. the husband of the Applicant has already been released on bail and on parity, present application be allowed and Anticipatory Bail be granted to the Applicant. Applicant has already joined investigation and undertakes to fully cooperate during investigation, as and when called.

8. Status Report has been filed by the State. It is stated in the Status Report that the FIR was registered pursuant to a complaint by the mother of the deceased, namely, Smt. Geeta Devi. Mother of the deceased has alleged in her complaint that her daughter Abha was being harassed and tortured by the husband and the in-laws of Abha. Applicant would instigate her son Abhimanyu Singh to demand money from his in-laws through the deceased. Abhimanyu Singh also used to beat his wife, the deceased, for dowry. Applicant and her husband Ajay Singh demanded Rs.3 Lakhs from the family of the deceased for purchase of a flat, but they refused to fulfil the demand. Due to

harassment by the mother-in-law and her husband, deceased committed suicide. It is further stated that serious allegations have been made by the complainant Smt. Geeta Devi, Sh. Jitender Prasad Singh (father of the deceased) and Mrs. Kalpana Kumari, sister of the deceased against the Applicant and her family members.

9. It is stated that one child was born to the deceased, who is about 2 years old. On the date of the incident i.e. 18.10.2019, child was taken to the maternal house by the parents of the deceased. He is still in their custody and is being looked after by them. Post-mortem of the deceased was conducted by a Board of two Doctors in the mortuary of G.T.B Hospital on 21.10.2019. Proceedings were videographed and the Doctors have opined the cause of death as "asphyxia as a result of antemortem hanging".

10. Learned APP for the State submits that the marriage was solemnized between the deceased and Abhimanyu Singh on 05.02.2017 and the death took place on 18.10.2019, which is within a period of 7 years from the date of marriage. There is thus a Statutory presumption under Section 113B of the Indian Evidence Act, 1872 and Section 304B IPC that the unnatural death of the deceased is a dowry death. He further submits that the allegations are serious and the mother of the deceased, in her Statement before the Executive Magistrate, has stated that at the time of marriage, cash and gold were given to the in-laws of the deceased. She has stated that soon after the marriage, the family of the Applicant, including her husband and the Applicant, used to mentally and physically torture her and would repeatedly demand dowry. Nearly 5-6 months ago, there was a demand of Rs.3 Lakhs for purchase of a house, though money was not given on account of the poor financial condition of the family. Complainant further stated that her daughter was an educated girl who could not have hanged herself and that the complainant suspects that she has been murdered, by her in-laws, including the Applicant.

11. Learned APP states that investigation is complete and charge-sheet has been filed on 17.01.2020 against the accused Abhimanyu Singh and Ajay Singh. However, the Applicant has been evading arrest. On 25.10.2019, notice under Section 41A Cr.PC was pasted on the door of her house, at Dayalpur, to join investigation, but she did not join. Subsequently, on 12.11.2019, a team was also sent to Gopalganj, Bihar in search of the Applicant, but she could not be arrested. Applicant did not join investigation and twice NBWs were issued against her, though, they could not be executed, first, on account of Election and second time on account of lockdown due to Covid-19. Learned APP submits that on 27.05.2020, the Applicant joined investigation at the Police Station, after she was given interim protection by the learned ASJ, but she did not cooperate during interrogation. On 02.06.2020, Court of learned ASJ has dismissed the Anticipatory Bail application. The allegations are serious and the Applicant is required for custodial interrogation and hence, Anticipatory Bail should not be granted to the Applicant.

12. Mr. Avadh Kaushik, learned counsel for the complainant reiterates the submissions made by the learned APP. Additionally, it is submitted that the alleged suicide was on the night of Karvachauth and the parents of the deceased suspect that their daughter was murdered. He submits that the Applicant is evading arrest and not cooperating with investigation / interrogation. In fact, the family members of the Applicant used their money and power and made every effort to delay the

post-mortem of the deceased. A petition had to be filed in this Court, being W.P.(C) No. 11243/2019, seeking directions to the Delhi Government and the Police to conduct the post-mortem of the deceased, who died an unnatural death. This action of delaying the post-mortem, at the instance of the Applicant and her family was in the teeth of the guidelines framed by the Court in its order dated 21.08.2014, in W.P. (C) 7230/2013, in the case of Avadh Kaushik vs. GNCTD and Ors. It is, after the Court passed an order on 21.10.2019, directing the Respondents therein to conduct the post-mortem without any delay, that the post-mortem of the deceased was finally conducted, after three days of the death.

13. Learned counsel for the Complainant further submits that the unnatural death is not suicide. She has been murdered due to the greed of the Applicant and the demands for dowry. Learned counsel further submits that the Guidelines for grant of Anticipatory Bail have been laid down by the Supreme Court in Gajanand Agarwal vs. State of Orissa and Ors., 2007 (5) SCALE 639. Attention is drawn to para 11 of the judgement wherein the Guidelines have been laid down, which reads as follows :-

"11. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
3. Prima facie satisfaction of the Court in support of the charge."

14. Learned counsel argues that following the law laid down in Samunder Singh vs. State of Rajasthan and Ors., (1987) 1 SCC 466, this Court in Ms. Preeti vs. The State (Govt. of NCT of Delhi), 2016 SCC OnLine Del 2325 has dismissed an Anticipatory Bail Application of the mother-in-law and sister-in-law of the deceased in somewhat similar circumstances.

15. I have heard learned counsels for the parties and examined their respective submissions.

16. In the case of Gajanand Agarwal (supra), Supreme Court has laid down the Guidelines to be considered while dealing with an application for bail. In the case of Lavesh vs. State NCT of Delhi, Bail Appln. No.1602/2011, decided on 05.12.2011, which was also a case under Section 498A/ 304B IPC and the petitioners were the real sister and brother of the husband of the deceased, the application for grant of Anticipatory Bail was dismissed by the Court relying on the judgement of the Supreme Court in Samunder Singh (supra). SLP against the said judgement was dismissed by observing that while considering an application for Anticipatory Bail, the Court has to take into

consideration the nature and gravity of the accusations, antecedents, possibility of the Applicant fleeing from justice, etc. In Samunder Singh (supra), the Supreme Court observed that Courts should normally not exercise the discretion to grant bail, disregarding the magnitude and seriousness of the matter, the fact of unnatural death of a daughter-in-law in the house of her in-laws and that the matter is still under investigation. Relevant para of the judgement is 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. So far as the present matter is concerned, since it has become infructuous, we do not propose to pass any order. Subject to these observations, the appeal is dismissed."

17. In the case of Ms. Preeti (supra), this Court declined to grant Anticipatory Bail to the mother-in-law and sister-in-law of the deceased who died an unnatural death and an FIR was registered under Sections 498A/304B/34 IPC. Court observed that the deceased had committed suicide within four and a half years from the date of the marriage. Petitioners were not cooperating with the investigation and the case was still at the threshold.

18. In the present case, the marriage between deceased Abha Singh and Abhimanyu Singh was solemnized on 05.02.2017. Death has taken place in less than four years from the date of the marriage, which raises a statutory presumption under Section 113B of the Indian Evidence Act, 1872, and Section 304 B IPC, as rightly contended by the learned APP. Mother of the deceased has made serious and pointed allegations against the Applicant, who is the mother-in-law of the deceased. Allegations of dowry demand, harassment and mental and physical torture have also been levelled. A categorical allegation of demand of Rs.3 Lakhs has been made. Status Report reveals that despite efforts by the Police, Applicant successfully evaded arrest and did not join investigation, except on one day after she was given interim protection by the learned ASJ. Status report, however, indicates that even on the said date, she did not cooperate during investigation.

19. While the learned counsel has sought to argue that the Applicant suffers from medical ailments, but there is only a vague mention of the same in the petition. Applicant has not even whispered as to what are the medical ailments from which she suffers. No medical documents have been placed on record in support of the plea. Merely because the Applicant is aged 64 years, cannot be a solitary consideration for grant of bail, in the light of serious allegations made by the complainant in her

statement before the Executive Magistrate. The investigation is still at the threshold and the Police, as per the Status report, requires the presence of the Applicant for custodial interrogation. The contention of the counsel for the Applicant that the Applicant was not present in the house at the time of the incident, is a matter of trial and cannot be gone into at this stage. The contention that the deceased being a lawyer and an educated girl was aware of her legal rights and yet there was no complaint, points to the innocence of the Applicant, in my opinion, has no merit. Only once the trial takes place, it would be known as to what circumstances prevented the deceased from making any complaint, if the allegations of harassment and dowry demand are found to be true. The statement of the parents of the deceased recorded before the Executive Magistrate contains serious allegations against the Applicant for repeated demands of dowry and mental harassment and torture of the deceased.

20. In my view, the case is at the threshold and the investigation is underway and in case anticipatory bail is granted at this stage to the Applicant, who is otherwise evading arrest and not cooperating in investigation, it would scuttle the investigation and will create further hurdles in arriving at the truth.

21. In the totality of circumstances, this is not a fit case for grant of anticipatory bail. Bail application alongwith the pending application is, accordingly dismissed. Interim order granted by this Court vide order dated 18.06.2020 and extended thereafter, stands vacated.

22. It is clarified that the expression of any opinion by this Court in the present case will not be treated as an expression on the merits of the case.

JYOTI SINGH, J JULY 6th , 2020 yg