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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 05.09.2023

+ BAIL APPLN. 312/2023

PARUL

..... Petitioner

Through: Mr J. P. Sengh, Sr. Advocate
with Mr Surender Singh,
Advocate.

versus

NCT OF DELHI

..... Respondent

Through: Mr Aashneet Singh, APP for
the State with Insp. Sushila, PS
Narela.
Mr Amit Gupta, Mr H. S.
Mahapatra, Ms Roshni Singh
and Mr Shiv Verma, Advocates
for complainant.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

1. The present bail application has been filed under Section 439 CrPC seeking regular bail in FIR No.0394/2022 under Sections 304B/34 IPC registered at PS Narela.
2. The version of the prosecution is that the deceased Poonam was married to the petitioner on 30.11.2020. The petitioner had misrepresented to the deceased that he is a law graduate and practising



lawyer. Subsequently, the deceased came to know that the petitioner was having an extra marital affair and was into betting. The relation of the deceased with the petitioner thus, became strained and she had also filed the following cases against the petitioner – (i) a petition under Section 125 CrPC; (ii) a petition under Section 12 of the Domestic Violence Act ('DV Act'); (iii) an FIR under Section 498A/406/34 IPC; and (iv) a Divorce Petition.

3. On 07.08.2022, the deceased Poonam committed suicide, which led to the registration of the aforesaid FIR under Section 304B/34 IPC on a complaint made by the father of deceased.

4. Learned senior counsel for the petitioner submits that the petitioner and the deceased got married on 30.11.2020, however, on account of matrimonial discord they started living separately w.e.f. 19.04.2021. He further submits that the deceased was a patient of anxiety and depression for which she had been taking treatment from North Point Clinic as well as from Dr Sumit Gupta. He further submits that even before committing suicide on the same day the petitioner visited Dr. (Sqn. Ldr.) Vinod Kumar Verma for her respiratory problem.

5. He submits that not only the deceased had been staying separately from the petitioner but had also filed four cases as enumerated hereinabove. He contends that ever since the deceased had started staying separately from the petitioner there was no contact between the petitioner and the deceased, therefore, there was no question of any harassment or cruelty being meted out to the deceased at the hands of the petitioner and that too soon before her death.



6. He submits that the petitioner is in custody since 24.08.2022; the investigation is complete and the charge-sheet has been filed, therefore, the custody of the petitioner is no more required. He further contends that in the charge-sheet as many as 22 witnesses have been cited by the prosecution and conclusion of trial is likely to take a long time. He, therefore, urges that having regard to the facts and circumstances of the case, the petitioner be enlarged on bail.

7. *Per contra*, learned APP supported by the learned counsel for the complainant has argued on the lines of the status report. On a query put by the Court as regard the ailment for which the deceased had been taking treatment from North Point Clinic, Dr Sumit Gupta as well as from Dr. (Sqn. Ldr.) Vinod Kumar Verma, the learned APP has invited the attention of the Court to the charge-sheet from the file of the Investigating Officer.

8. Learned counsel for the complainant has also invited the attention of the Court to the statement of the father of the deceased, which has been recorded under Section 161 CrPC, to contend that on 06.08.2022, a day prior to the day when the deceased committed suicide, the petitioner had met the deceased on the way to *Narela* and had threatened the deceased, which became a reason for the deceased to take an extreme step of committing suicide. He submits that if enlarged on bail the petitioner may influence the material witnesses.

9. I have heard the learned senior counsel for the petitioner, learned APP, as well as, the learned counsel for the complainant and have also perused the record.



10. This Court is conscious of the fact that at this stage when an application for bail is being considered the probative value of the material which is on record along with the charge-sheet cannot be considered; that is for the learned Trial Court to consider during the trial. However, it cannot be overlooked that the deceased was staying separately from the petitioner w.e.f. 19.04.2021 and had been taking treatment for anxiety and depression.

11. A perusal of the medical documents of the deceased attached to the charge sheet show that the deceased was under the treatment of Dr Amulya Bharat (consultant Neuropsychiatrist of North Point Clinic) who had examined the deceased on 01.09.2021. Thereafter the deceased was under the treatment of Dr. Sumit Kumar Gupta for anxiety and depression related problems. The said doctor had seen the deceased on 20.11.2021, 18.12.2021 and 24.03.2022 and he had prescribed the following medicines to the deceased (i) Tab Nexito 5 mg (Escitalopram), (ii) Tab Petril MD 0.25 mg (Clonazepam), (iii) Tab. Migrabeta TR 20 mg (Propranolol) and (iv) Tab. Paxidep CR 12.5 mg and 25 mg (Paroxetine), which are medicines for anxiety and depression. 'Panic attack' and 'anxiety' also find mention in the aforesaid prescriptions of Dr. Sumit Kumar Gupta for which the aforesaid medicines had been prescribed.

12. The deceased was also treated by Dr. (Sqn. Ldr.) Vinod Kumar Verma on 07.08.2022 i.e. on the day she committed suicide, for her respiratory problem. The prescription of Dr. (Sqn. Ldr.) Vinod Kumar Verma dated 07.08.2022 shows that the deceased was referred by him to the treating psychiatrist for further evaluation.



13. A notice under Section 91 Cr.P.C. was issued to Dr. Sumit Kumar Gupta by the IO and he responded to the questions asked by the IO through his reply dated 20.08.22, which reads as under:-

“In reference to the questions asked in your aforesaid notice dated 20th August, 2022 kindly note the following:

- 1. Poonam Mor had visited me on 20th November, 2021, 18th December, 2021, 24th March 2022 and 17th June 2022.*
- 2. The stressors mentioned by Ms. Poonam Mor were marital problem, ongoing legal battle and comments by some of close relatives on her parental side. Her symptoms used to exacerbate around Court Hearing dates.*
- 3. The treatment papers attached are verified to be used by me by affixing my signature.”*

14. On an overall conspectus of the treatment prescribed to the deceased and the response of Dr. Sumit Kumar Gupta to section 91 CrPc notice, it *prima facie* appears that the deceased was under treatment for anxiety and depression and the demand of dowry was not stated to be a stressor or trigger for her said medical issues, as shared by her with the treating doctor.

15. For invoking the offence under Section 304B IPC, not only the harassment or cruelty should be soon before death but it should be related to demand of dowry. The expression “soon before death” is a relative expression. Time lag may differ from case to case. All that is necessary that the demand of dowry should not be stale but should be



a continuing cause for the death of married woman under Section 304B IPC.

16. In the statement of deceased's father recorded under section 161 CrPC, relied upon by the learned counsel for the complainant, there is no mention that any demand of dowry was made by the petitioner when he allegedly met and threatened the deceased on 06.08.2022.

17. No doubt the complaint was made by the deceased against the petitioner and his family members as early as on 28.09.2021 and the same culminated into the FIR under Sections 498A/406/34 of the IPC on 08.03.2022, but the allegation in the complaint dated 28.09.2021 relates to the demand of dowry prior to the date when the deceased left her matrimonial home on 19.04.2021.

18. On a query put by the court, the learned APP appearing on behalf of the State fairly concedes that there is nothing on record to show that the demand of dowry was made by the petitioner after the deceased left her matrimonial home on 19.04.2021.

19. Insofar as the extra marital affair of the petitioner, or the petitioner being into betting, is concerned, that cannot be a ground for implicating the petitioner under Section 304B IPC.

20. Apart from the seriousness of the offence, this Court cannot shut its eyes to other factors which have to be considered for grant of bail. At this stage, there is a presumption of innocence in favour of the petitioner. Delay in commencement and conclusion of the trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. It is not in dispute that as many as 22



witnesses have been cited by the prosecution and trial has not yet commenced. Evidently, it is going to be a protracted trial.

21. The investigation is complete and charge sheet has been filed, the custody of the petitioner is no more required. Therefore, no useful purpose will be served in keeping the petitioner behind the bar.

22. Insofar as the apprehension expressed by the learned counsel for the complainant that the petitioner may influence the material witnesses, suffice it to say that the material witnesses are the family members of the deceased and further strict conditions can be imposed to allay the apprehension of the complainant's counsel.

23. Considering the aforesaid facts in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount, subject to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner/applicant will not leave the city without prior permission of the Court.
- b) Petitioner/applicant shall appear before the Court as and when the matter is taken up for hearing.
- c) Petitioner/applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating Officer concerned.



d) Petitioner/applicant shall not contact or threaten any witnesses and shall not indulge in any criminal activity.

24. The petition is disposed of.

25. Needless to state that these observations shall not be construed as an expression of opinion on the merits of the case and shall not prejudice the trial in any manner.

26. Copy of the order be forwarded to the concerned Jail Superintendent for information and necessary compliance.

27. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

SEPTEMBER 5, 2023
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