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

% *Date of Decision: 27th September, 2024*

+ **BAIL APPLN. 3068/2024**

SUSHMA

.....Applicant

Through: Mr. Anil Goel,
Mr. Chanchal Sharma and
Mr. Aditya Goel, Adv.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with
Insp. Arun Dagar, PS
Bhalswa Dairy.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN (Oral)

1. The present petition is filed seeking pre-arrest bail in FIR No. 456/2024 dated 07.06.2024, registered at Police Station Bhalswa Dairy, for offences under Sections 498A/304B/34 of the Indian Penal Code, 1860 (**IPC**)

2. The present FIR was registered on a complaint made by the complainant, who is the mother of the deceased. During enquiry, the statements of the father and brother of the deceased were also recorded.

3. The brief facts of the case are that the deceased had married the son of the applicant in December, 2021. It is alleged



the in-laws of the deceased, including the applicant (mother-in-law of the deceased) had demanded dowry from the family of the deceased at the time of the marriage, pursuant to which, ₹10,00,000/- had been given in cash as dowry to the applicant along with other household items.

4. It is alleged that after five months of her marriage, the deceased told the complainant that her husband (the applicant's son) and his family members were demanding ₹5,00,000/- as they wanted to purchase a car. It is alleged that when the deceased had gone to her maternal home, she had disclosed to the complainant that the accused persons used to beat her for not giving ₹5,00,000/-.

5. It is alleged that the victim also made a WhatsApp video call on 28.05.2024 to the complainant asking her to arrange the amount of ₹5,00,000/- as she was being daily beaten and harassed by her husband and in-laws for dowry.

6. It is alleged that on 31.05.2024, the deceased had sent an audio recording through WhatsApp to her sister Nidhi wherein the applicant (mother-in-law of the deceased) could be heard arguing and harassing the deceased. On the same day, in the evening, the applicant's husband (co-accused) had called the father of the victim and informed about the death of the deceased.

7. The FIR was lodged on the suspicion that the accused persons were involved in the death of the victim.

8. The pre-arrest bail application filed by the husband of the present applicant – Raja Ram, was dismissed by this Court by



order dated 10.07.2024. It was held as under:

“26. It is pertinent to note that the deceased has admittedly died an unnatural death within seven years of her marriage in her matrimonial home. The same raises the statutory presumption under Section 113 of the Indian Evidence Act, 1872. The applicant is the father-in-law of the deceased who has been specifically named in the complaint. It is also relevant to note that the applicant did not deem it proper to inform about the death of the victim to the investigating authorities despite the unnatural circumstances of her death. The fact of unnatural death was informed to the Police by a friend of the deceased on a PCR call. It was informed that the deceased had marks on her neck.

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32. The ground of parity with the co-accused persons who have already been granted pre-arrest bail is unmerited. While it is true that certain general allegations against all the family members have been made, however, it is relevant to note that the complainant has made serious and pointed allegations regarding incessant demands of dowry and harassment against the applicant and his wife who lived in the same house as the victim albeit on different floors. Moreover, the applicant is clearly the eldest in the family and the possibility of his having instigated the demand of dowry that led to the eventual death of the victim cannot be ruled out at this stage, especially, since the complainant has stated that the dowry articles at the time of the marriage had been given specifically to the applicant.”

9. By order dated 17.09.2024, the Hon'ble Apex Court, after taking into consideration the nature of the case, dismissed the Special Leave Petition filed by the husband of the applicant against the order dated 10.07.2024 passed by this Court.

10. The learned counsel for the applicant submits that the applicant along with her husband was residing on the first floor of the house while the rest of the family including the deceased



resided on the second floor of the house.

11. He submits that the applicant, being a senior citizen aged 60 years, is suffering from various old age diseases including acute arthritis in her knees. He submits that it is very difficult for her to climb stairs to the second floor of the house and had no concern in the day today personal affairs of the deceased and his son.

12. He submits that the sister-in-law and brother-in-law of the victim have already been granted pre-arrest bail by the learned Trial Court *vide* order dated 21.06.2024 wherein it was noted that no specific allegations of demand of dowry or causing harassment to the deceased had been levelled against them.

13. The learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that specific allegations have been levelled against the applicant whereby he cannot claim parity with the co-accused persons who have been granted pre-arrest bail.

14. He submits that the PCR call regarding the death of the victim was made by her friend who had informed that the victim had died an unnatural death. He submits that the accused persons made no attempt to intimate the police authority on their own.

15. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation has been carried out by the investigating agency.



16. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, adverting to its previous precedents, has discussed the parameters to be considered while considering pre-arrest bail applications, in the case of *State of A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104*, has held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting 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.”

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp.189-90, para 8)

“The 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.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the 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 the 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. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

17. This Court, while dismissing the bail application of the applicant's husband, who is a co-accused in the present case, observed that the victim died under unnatural circumstances within three years of her marriage to the applicant's son. This fact raises a statutory presumption under Section 113B of the Indian Evidence Act, 1872. Furthermore, the applicant has been specifically accused of harassing the deceased soon after her marriage, allegedly in connection with dowry demands, which eventually led to her tragic death.

18. This Court relied upon the judgment passed by the Hon'ble Apex Court in the case of ***Samunder Singh v. State of Rajasthan and Others : (1987) 1 SCC 466***, wherein it was held that in cases involving dowry death, the High Court should exercise caution



and refrain from granting pre-arrest bail, given the gravity and seriousness of such offences.

19. It was further noted by this Court that, although there was a delay in the statement regarding the cruelty inflicted upon the deceased, such delay cannot, at this stage, be considered detrimental to the prosecution's case. The merit of this aspect will be evaluated during the trial, and it does not warrant the granting of pre-arrest bail at this juncture.

20. It cannot be held, at this stage, that the investigation is being carried out with the intention to injure or humiliate the applicants. The nature and the gravity of the allegations are serious. It is settled law that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [Ref. *State v. Anil Sharma : (1997) 7 SCC 187*].

21. The investigating agency needs to be given a fair play in the joints to investigate the matter in the manner they feel appropriate.

22. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. It plays a crucial tool in preventing harassment and unjust detention of innocent persons. However, the court must carefully balance the individual's right to liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence, its societal impact,



and the need for a comprehensive and unobstructed investigation.

23. While the benefit of proviso to Section 437 of the CrPC, which allows for leniency in granting bail to a woman, sick, or infirm, is recognized under certain circumstances, this benefit cannot be extended at the stage of pre-arrest bail. The applicant is accused of having a role similar to that of her husband/co-accused, whose pre-arrest bail has already been dismissed by the Hon'ble Apex Court.

24. Even otherwise, the protection under Section 437 of the CrPC is not absolute and is subject to the nature and gravity of the offence. In this case, where the applicant is alleged to be directly involved in the incessant demands of dowry and harassment of the deceased, the mere fact of being an elderly woman or infirm does not automatically entitle her to pre-arrest bail. The allegations must be scrutinized based on the merits of the case, and the severity of the crime takes precedence over any personal exemptions under Section 437 of the CrPC.

25. In view of the above, in the present circumstances, this Court is of the opinion that custodial interrogation of the applicants ought not to be denied to the investigating authority.

26. Considering the aforesaid discussion, this Court is of the opinion that the applicant has not made out a *prima facie* case for grant of pre-arrest bail.

27. The present application is accordingly dismissed.

28. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application



and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

SEPTEMBER 27, 2024

AMIT MAHAJAN, J