

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

Date of decision: 06th September, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2459/2021**

GAGAN KUMAR Petitioner
Through Mr. Vinay Kumar Sharma and Prince
Sharma, Advocates
versus

STATE OF NCT OF DELHI Respondent
Through Mr. Amit Chadha, APP

+ **BAIL APPLN. 2778/2021**

SHALINI Petitioner
Through Mr. Vinay Kumar Sharma and Prince
Sharma, Advocates
versus

STATE OF NCT OF DELHI Respondent
Through Mr. Amit Chadha, APP

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. These petitions filed under Section 438 Cr.P.C are for grant of bail to the petitioners in the event of arrest in FIR No.353/2021 dated 04.08.2021 registered at Police Station Ranhola for offences under Section 498A, 304B and 34 IPC.

2. Brief facts leading to the present petitions are as under:

a) On 03.06.2021, a PCR call was received at Police Station Ranhola which was registered vide DD No 73. The caller identified himself as the husband of the deceased and a resident of H.No A-91,

Sainik Enclave, Mohan Garden Tiranga Chowk. Police reached the place of incident and made enquiry. On 04.06.2021, the mother of the deceased, Smt. Usha w/o Sh. Subhash Chand R/o H. No. 1029, Gali No. 30, Sant Nagar Burari, New Delhi gave a complaint to the SDM Dwarka. On the direction of SDM, FIR No. 353/2021 was registered at Police Station Ranhola for offences under Sections 304B/498B/34 IPC.

b) It is stated by the complainant that her daughter, Komal, got married to one Nitesh S/o Late Sh. Madanlal Kashyap R/o 92A, Sec-3 Sainik Enclave, Mohan Garden, Delhi on 15.03.2021, as per Hindu rituals. It is stated that at the time of marriage, dowry articles were given by them according to their capacity. It is stated that Nitesh had refused to take the Motorcycle which was given to him as he did not like the same. It is stated that after one month of marriage, Komal (deceased) told the complainant that her mother-in-law, Smt. Meena Devi, is torturing her for not bringing dowry as per their expectations. It is stated that Komal also told the complainant that she is pregnant. It is stated that after Komal's in-laws forced her to bring an air conditioner from her father they had given Rs. 30,000/- to them for purchase of air conditioner, so that their daughter can live happily in her in-law's house. It is further stated that Komal told the complainant that her sister-in-law, Shalini (petitioner in BAIL APPLN. 2778/2021) and her husband, Gagan (petitioner in BAIL APPLN. 2459/2021), also tortured her for the demand of dowry. It is further stated that the deceased was not given good quality food. It is stated that the deceased called the complainant and told her that her husband, her

mother-in-law, her sister-in-law (petitioner in BAIL APPLN. 2778/2021) and the husband of her sister-in-law (petitioner in BAIL APPLN. 2459/2021) are torturing/harassing her for demands of dowry. It is further stated that the deceased committed suicide due to this torture.

c) During the course of investigation exhibits were collected and seized. On 05.02.2021 post mortem of the deceased was got conducted at DDU Hospital and during the course of post-mortem viscera, clothes of deceased and blood sample were preserved by the doctor.

d) On 05.06.2021, statement of the father of the deceased was recorded under Section 161 Cr.P.C in which he alleged that when the deceased came back to her parental house after 10 days of her marriage, she told him that the petitioners herein and the mother-in-law of the deceased taunted her for not bringing sufficient dowry i.e, ear-rings for mother-in-law & sister-in-law (petitioner in BAIL APPLN. 2459/2021) and gold chain for brother-in-law (petitioner in BAIL APPLN. 2778/2021). On 05.06.2021 the husband of the deceased was arrested. On 19.06.2021, Post mortem report of deceased was received from Mortuary DDU hospital in which reason of death has been kept pending till receipt of FSL result. Viscera of the deceased have been deposited with FSL for analysis & expert opinion.

e) The petitioners approached the Sessions Court for grant of anticipatory bail. The learned Additional Sessions Judge-01, West,

Tis Hazari Courts, *vide* order dated 26.06.2021 dismissed the said applications.

f) Thereafter the petitioners have filed the instant applications for grant of bail under Section 438 Cr.P.C.

3. Heard Mr. Vinay Kumar Sharma, learned counsel appearing for the petitioner, Mr. Amit Chadha, learned APP appearing for the State and perused the material on record.

4. Mr. Vinay Kumar Sharma, learned counsel for the petitioner contends that Shalini (petitioner in BAIL APPLN. 2778/2021) got married to Gagan (petitioner in BAIL APPLN. 2459/2021) on 24.02.2014 and were living separately. He further contends that there are no specific allegations against the petitioners in the FIR and hence the allegations against the petitioners are false and frivolous. The learned counsel for the petitioner states that there is a discrepancy in the statements given under Section 161 Cr.P.C of the mother and the father of the deceased. He states that the statement of the father of the deceased under Section 161 Cr.P.C states that within ten days of her marriage, the deceased told him that her in-laws are troubling her regarding dowry whereas as per the statement of the mother of the deceased everything was fine till one month of the marriage. He further contends that the petitioners are ready to join the investigation as and when called for and there is nothing to be recovered from the petitioners and hence anticipatory bail be granted to them.

5. *Per contra*, Mr. Amit Chadha, learned APP contends that the deceased was harassed and tortured by her in-laws and because of the torture and harassment she took the extreme step and committed suicide. He states that there is an apprehension of the petitioners influencing the witnesses and

tampering with evidence. He states that the petitioners are not cooperating in the investigation. He further states that in the Post-Mortem report of the deceased the reason of death is still awaited. The learned APP for the State further submits that the allegations in the FIR are of very serious nature and the investigation is at a nascent stage. It is stated that the custodial interrogation of the petitioner is required to unearth the truth and therefore the petitioner ought not to be granted anticipatory bail.

6. The parameters for granting anticipatory bail have been succinctly laid down in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, wherein the Supreme Court has observed as under:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. *Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire*

available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available.”

(emphasis supplied)

7. The petitioners are relatives of the deceased and were living separately. There is nothing on record, at this juncture, to directly connect the petitioners to the crime. All the exhibits have been collected and sent to the FSL. FSL report is awaited. This Court is of the opinion that no useful purpose would be served in taking the petitioner in custody. Keeping in mind the fact that all the relevant material has already been collected by the Police and sent to the FSL, this Court feels there is no necessity of custodial interrogation of the petitioners. Accordingly, this Court is inclined to grant bail to the petitioners in the event of arrest on the following conditions:

- a) Each petitioner shall furnish a personal bond in the sum of Rs.50,000/- with one surety of the like amount, who should be a relative of the petitioner, to the satisfaction of the Trial Court/Duty Magistrate.
 - b) The petitioners shall not leave NCT of Delhi without prior permission of this Court.
 - c) The petitioners is directed to give their mobile numbers to the Investigating Officer and keep them operational at all times.
 - d) In the Memo of Parties it is stated that the petitioners are the residents of H.No. E-549, J J Camp, Tigri, Delhi. The petitioners are directed to continue to reside at the same address. In case there is any change in the address, the petitioners are directed to intimate the same to the IO.
 - e) The petitioners shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.
 - f) Violation of any of these conditions will result in the cancellation of the bail given to the petitioners.
8. It is made clear that the observations made in this order are only for the purpose of grant of anticipatory bail to the petitioners and cannot be taken into consideration in the trial.
9. Accordingly, the bail applications are disposed of along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J.

SEPTEMBER 06, 2021

Rahul