

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN.2979/2020**

Judgment reserved on : 22.03.2021

Date of decision : 14.06.2021

RAJESH LAL

..... Applicant

Through: Mr. Niraj Jha, Adv.

Versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP
for State with Investigating
Officer Ms. Aka Singh, Adv.
for complainant

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant vide the present application has sought the grant of regular bail in relation to the FIR No.42/2020, PS Sonia Vihar, under Sections 304B/498A/34 of the Indian Penal Code, 1860, which FIR is indicated to have been registered on 29.02.2020. The applicant is the spouse of the deceased and was married to her on 30.10.2019 at the Rosary Church Kingsway Camp, Delhi according to the Christian rites and ceremonies. The applicant contends that it was a simple marriage performed without any demand of dowry and that there was

no dowry demand made by the applicant's side neither before the marriage nor after the marriage.

2. The applicant further submits that there was only a moderate gathering in the marriage. The applicant further submits that his spouse Maclina was suffering from a mental disorder namely somniloquy i.e. sleep talking disorder and she often used to scream during her sleep. The applicant further submits that the family of the deceased had not disclosed of this mental disease of the deceased to the applicant's family before the marriage of the applicant to Maclina (since deceased)

3. According to the applicant, because of the mental illness, Maclina was unable to behave normally and was reluctant to engage herself with the family members of the applicant and was unable to take part in post-marriage rituals and confined herself often in her room and was reluctant to come out despite requests of his family members. The applicant further submits that whenever he asked the deceased about the details and reasons for her disorder, she used to become angry and sometimes furious and sometimes used to throw household articles. The applicant further submits that he had made enquiries from the brother of the deceased Godson, who had told him that the deceased was suffering from depression and was taking the treatment from their family doctor before marriage. The applicant submits that on 07.11.2019, the complainant that is an apparent reference to the father of the deceased named Shri Jerome George, s/o Shri Max Well George visited the applicant's house on the request of the applicant and that the applicant and his mother had told the

complainant about the unnatural behavior of Maclina, on which, the complainant i.e. the father of Maclina requested the applicant to send her to her parental home after every 15 days as she was suffering from depression. It is submitted by the applicant that the brother of the deceased had also asked the applicant to send the deceased to her parental home for getting treatment from their family doctor, to which, the applicant had said that he would take the deceased to some good hospital for treatment, to which, the brother of the deceased had however refused.

4. The applicant further submits that in the first week of December, 2019, Mr. Godson, the brother of the deceased had again taken back the deceased to her parental home for treatment and at that time, the applicant discussed/ enquired from the deceased about her episode of panic and sleeping disorder again. The applicant submits that on 04.01.2020, there was a wedding of the applicant's relative but that the deceased refused to go for the same and that the applicant had dropped her at her parental home and that when the deceased was there, the brother of the deceased Mr. Godson had got her treated from a doctor named Dr.D.K. Gautam and when the deceased had come back, Mr. Godson had handed over the prescription related to the deceased to the applicant and had also handed over the additional medicines which the applicant had refused to administer to the deceased. The applicant submits that the medicines prescribed by Dr. Gautam were Vernol and Zapiz which are meant for depression and panic attacks. The copy of the prescription of Dr. DK Gautam was submitted by the applicant along with the application. It has been

submitted through the application that around 26.01.2020, the deceased was feeling restless and uneasy and that the applicant for the same took her to the Institute of Human Behavior & Allied Sciences (IHBAS), where the doctor prescribed her medicines i.e. Ibuprofene and Zolphibem for removal of uneasiness and that when the brother of the deceased came to know about this that the applicant took the deceased to the IHBAS, he got angry with the applicant as he had taken her without prior information to him, to which, the applicant told him that Maclina was his wife and it was his duty to provide her with the best medical treatment, to which, Mr. Godson had stated that even if they got married the deceased with the applicant, they had not sold the deceased to the applicant.

5. The applicant further submits that he informed of this incident to his wife and she objected the manner of conversation by Mr. Godson with the applicant, which was also reflected from the transcript between the deceased and her younger sister Twinkle. It has been submitted further by the applicant that in February, 2020, the maternal uncle of the applicant named Chhote Lal was seriously ill and was at the 4th stage of cancer, so the applicant's mother used to go to her native place at Jahangirpur, Jewar, Gautam Budh Nagar, UP to take care of her brother and she was thus with him during most of February, 2020. The applicant further submits that he requested his wife (since deceased) to visit his ailing maternal uncle at Jahangirpur, Jewar, Gautam Budh Nagar, UP along with the applicant in February, 2020 but she refused to go owing to her mental illness as she was not ready to be embarrassed before the family of the applicant's maternal

uncle and thus the applicant along with his mother had again visited his maternal uncle by dropping the deceased at her parental home on 11.02.2020.

6. It is submitted by the applicant that even after 11.02.2020 when the deceased was residing with her parents, there was a smooth and loving affection in existence between his wife and himself and they remained in touch through social media and used to talk almost everyday and that they were enjoying a romantic relationship and were very affectionate to each other which the applicant submits would be evident from the chats through whatsapp as well as Instagram conversation between the deceased and the applicant besides certain audio conversations.

7. The applicant further submits that his maternal uncle expired on 27.02.2020 and because of this, he along with his mother and other family members had to go his native place to attend the burial and other death related ceremonies. It is submitted by the applicant that in the second half of February, 2020 the North-East Part of Delhi was badly hit by the riots and thus it was not safe for the applicant to travel and it was thought that the deceased should stay at her parental home. The applicant further submits that on 28.02.2020 around 11:15pm, his wife (since deceased) unfortunately hung herself to death at her parental home and that the applicant was shocked to hear of the same but his agony was enhanced when the brother and father of the deceased did not permit him to join the last ritual and burial ceremony and that instead of consoling him on account of the demise of his wife, the father of the deceased i.e. the complainant made a false complaint

to the police falsely alleging that they had given Rs.5 lacs to the applicant at the time of the marriage along with certain other gold articles and had spent around Rs.25 lacs in the marriage and further alleged that the deceased was subjected to harassment and cruelty on demands of dowry though it has been submitted by the applicant that it is well known that dowry demand is not known in Christian Society.

8. The applicant further submits that the complainant had named the applicant, his mother Smt. Pushpa Lal and sister Anjali Wadhwa and cousin sister Nidhi as accused and that Anjali Wadhwa was granted interim protection by this Court vide order dated 29.03.2020 which continues and that the other co-accused Smt. Pushpa Lal and Nidhi were likewise granted protection. The applicant's prayer for grant of anticipatory bail is indicated to have been declined by the learned trial Court as well as by this Court vide order dated 28.07.2020 in Bail Appln.1601/2020. The applicant further submits that after his prayer seeking grant of anticipatory bail was declined by this Court, he surrendered on 06.08.2020 and was sent to judicial custody on 07.08.2020 and has been incarcerated since then. The applicant further submits that he is suffering from tuberculosis and he is living with one kidney by birth and which would be reflected through the medical documents and furthermore, this Court at the time of consideration of the Bail Appln.16012020 had even directed the police to submit the status report indicating the mobile call report between the applicant and the deceased and the police had filed a status report regarding the CDR of mobile numbers between the applicant and the deceased. The application filed by the applicant

before the learned trial Court seeking grant of regular bail is indicated to have been declined vide order dated 01.09.2020.

9. The applicant further submits that he is a peace loving citizen and there is no legal evidence connecting him with the unfortunate suicidal death of the deceased Maclina and that the allegations in the FIR do not bring forth any ingredients of the alleged commission of offences punishable under Section 498-A of the Indian Penal Code, 1860 nor under Section 304-B of the Indian Penal Code, 1860 as admittedly the FIR does not speak of demand of dowry prior to the marriage and it has been submitted by the applicant that it does not appeal to a prudent mind that the person seeking the dowry would not raise the demand of dowry prior to the marriage and would ask for the same after the marriage. *Inter alia* the applicant submits that there are no averments in the FIR in relation to entrustment of any Istridhan of the deceased with the applicant and there is no allegation that the applicant had misused the dowry articles and used the same for his benefits.

10. *Inter alia* the applicant submits that the allegations in the FIR are vague and there is no corroboration of the same through the investigation conducted and that there is no specific date, time and month of any dowry demand mentioned in the FIR. The applicant further submits that admittedly the deceased had committed the suicide in her parental home after 17 days of the separation of the deceased and the applicant as on 11.02.2020, the deceased was brought by the applicant to her parental home, which is admitted and the deceased committed suicide on 28.02.2020 at her parental home

and thus there remains no room of any cruelty or harassment by the applicant. The applicant further submits that Section 304B of the Indian Penal Code, 1860, itself requires as necessary ingredients that soon before the death of the deceased, she was subjected to cruelty or harassment by the applicant or any relative of the applicant for, or in connection with, any demand for dowry, which had not even been remotely brought forth in the instant case.

11. The applicant further submits that the deceased was admittedly suffering from a mental disorder i.e. somniloquy i.e. a sleeping talking disorder, for which, she was getting medicines and it can be presumed that the ailment/ disorder was around 30 years back and that chances of the suicide by the deceased due to the mental disorder cannot be ruled out. It is also submitted by the applicant that there was not a single complaint that has been lodged by the complainant or the deceased before any authority prior to the demise of the deceased and that itself was an indication that there was no cruelty of any kind meted out by the applicant to the deceased. It is submitted by the applicant that the real reason for the false allegation levelled against him was because he had taken the deceased to IHBAS for a proper treatment, for which the family of the complainant was angry with him as they did not want to disclose the mental disorder of the deceased as that would create difficulty in the marriage of the younger sister of the deceased.

12. The applicant further submits that he is the only son of his mother aged 70 years suffering from several old age ailments and there is no one to look after her and that all allegations levelled in the

FIR are wholly false and that the contention of the complainant that a sum of Rs.25 lacs was spent in the marriage of the deceased to the applicant is difficult to believe as the status of the complainant was not that he could spend such a huge amount. *Inter alia* the applicant submits that there is no approximate link between cruelty, harassment and the death in the instant case and thus there is no live link that exists between the demise of the deceased and any allegations levelled against him. The applicant has also submitted that the complainant had taken the mobile phone of the deceased after 4 days of her marriage and that no investigation in relation to that mobile number 8377873801 had been carried out by the Investigating Agency. *Inter alia* the applicant has submitted that there are observations in the order dated 28.07.2020 of this Court in para 26 in Bail Appln. 1601/2020, which read to the effect:

26. During the course of the proceedings on 10.07.2020, in as much as, the averments made in the petition were to the effect that the petitioner had made no telephone call to the deceased at all on 26.02.2020 as was also submitted vide paragraph 8(xix) of the petition, as it was informed on behalf of the State on 10.07.2020 in reply to a specific Court query in relation to the CDR details of the mobile of the deceased after instructions from the Investigating Officer of the case that she has called for CDR details of the mobile of the deceased and that the same would be verified within a period of three days and the status report thereafter dated 10.07.2020 was submitted by the State and subsequently, the State also submitted the status report dated 14.07.2020 under the signatures of the SHO, PS Sonia Vihar, wherein, it was stated to the effect:-

"In continuation of earlier status report, it is submitted the CDR of mobile number of deceased

Maclina (9250603808) and petitioner Rajesh Lal (9716461035) has been obtained. After CDR analysis it has been found that petitioner talked on the mobile of deceased Maclina on 26.02.2020 at 8.12 PM for the time interval 95 seconds. Complainant of the case Sh Jerome George has already stated in his statement that on 26.02.2020, Rajesh Lal called her daughter Maclina and her daughter said that I am coming to you but Rajesh Lal said that if you come near me then I will stab you with a knife."

it was thus contended on behalf of the State/respondent that there were no circumstances or grounds whatsoever for the grant of anticipatory bail to the applicant and that vide order dated 04.07.2020 the learned ASJ-02 (N/E), KKD Courts, Delhi, had not considered it appropriate to grant the anticipatory bail to the applicant rightly."

and it has been submitted by the applicant that no investigation had been conducted by the police in relation to as to on whose name the mobile number 9250603808 stood.

13. It is submitted further by the applicant that as per the status report dated 14.07.2020 submitted to the Court and from the True Caller App, the said numbers stand registered in the name of Guru Ji Kalu and not in the name of the deceased and thus reliance in relation thereto cannot be placed on the status report of the IO.

14. The response of the State through its status report dated 11.11.2020 indicates that the charge sheet under Sections 304B/498A/34 of the Indian Penal Code, 1860, was filed on 04.10.2020. Apparently, the investigation in the matter is complete. The status report and the copy of the charge sheet placed on record indicates that the complainant i.e. the father of the deceased had

alleged through the FIR that he had given a sum of Rs.5 lacs in cash, a gold chain for the groom, one gold ring and one watch and, one gold chain and one gold ring to the groom's mother and he had also given his daughter Macklina one gold necklace, 2 gold rings, 1 gold chain, 2 sets of tops, 1 pair of gold kundals, 1 set of anklets and one set of toerings, apart from furniture items, cupboard, refrigerator, washing machine, AC, LED TV, microwave, a set of 101 steel utensils, a set of 51 steel utensils and clothing as dowry and gifts to all guests and he had also been given a sum of Rs.25 lacs in the marriage. The complainant had alleged that despite having given so much dowry to his daughter's husband i.e. the applicant, her mother-in-law, sister-in-law Anjali and the applicant's aunt's daughter Nidhi started taunting his daughter and used to ask her to get gold jewellery for everyone, a refrigerator and money for enabling Rajesh Lal i.e. the applicant herein to start a business and when his daughter refused to get dowry then they used to beat her and that they were all involved in beating her and they used to lock his daughter in a room and did not give her food. The complainant had alleged further through the FIR that his son-in-law the applicant had beaten his daughter in relation to the dowry and dropped her daughter at his house and all this had been told to him by his daughter, after which the son of the complainant Mr. Godson had made the applicant understand and on 13.01.2020, Mr. Godson had dropped Maclina at her matrimonial home but even thereafter, the spouse kept demanding dowry and on 11.02.2020, all four of them had dropped his daughter at his house at Sonia Vihar. The complainant had alleged through the FIR that when Mr. Rajesh

Lal, the applicant came to drop his daughter, he tried to make him understand that he was unable to give any more dowry but the applicant did not listen to him and had left and on 26.02.2020, the applicant had called his daughter and when her daughter told him that she was coming to him, the applicant said that if she came near him then he would stab her with a knife and after this, his daughter started staying silent. *Inter alia* as per the FIR, on 28.02.2020, he was sitting with his daughters on the first floor when his daughter said that she was going to take a bath and it was around 11:45 at that time and when his daughter did not come back after half an hour, he went with his younger daughter Twinkle George to the 2nd Floor and when he reached there he saw that his daughter Macklina had committed suicide by hanging from the ceiling hang with the help of a stole and he had got her down with the help of his daughter Twinkle after cutting the stole and had called his son Godson and asked him to come home and his son came home after 20-25 minutes and made a PCR call.

15. The State has further submitted that during the course of investigation, the statements of other family members of the deceased i.e. her brother Godson and sister Twinkle were recorded, who corroborated the statement of their father Mr. Jerome George. The statement of Md. Akhtar, s/o Abdul Jabbar, a family friend was recorded who had also stated that Maclina had told him that her husband Rajesh was pressurizing her to do the job and likewise Vimal Joshi, W/o Kailash Chand, a neighbour, had also stated that Maclina had told her that she was not happy with her marriage as her in-laws

are demanding dowry. It is submitted by the State that the post-mortem collected from the GTB hospital showed that the death was due to asphyxia as a result of antemortem hanging.

16. The State further submits that during the investigation, the CDR of the mobile number of the deceased Macklina, number 9250603808 and the accused Rajesh Lal number 9716461035 had been obtained and after CDR analysis it has been found that applicant had talked to the deceased on 26-02-2020 at 08.12pm for the time interval of 95 seconds and that the complainant in his statement had also stated that on 26-02-2020, Rajesh Lal had called his daughter Macklina and his daughter told him that she was coming to him but the applicant said that if she came near him, he would stab her with a knife. It is also submitted by the State that the phone used by Maclina had been sent to the FSL for establishing the details of the conversation between Maclina and the accused Rajesh Lal and that the FSL result was awaited and the bills articles of dowry and furniture were also reported to have been verified by the Investigating Agency inclusive of the bills regarding the marriage party at Signature Garden as well as the aspect of Maclina having been taken by her husband to IHBAs for a check up on 27.01.2020 & 29.01.2020. The State has vehemently opposed the prayer made by the applicant seeking grant of regular bail.

17. Written and oral submissions were made on behalf of either side. The applicant submits that the factum that the complainant even after the incident on 28.02.2020 when he found that his daughter had hung herself did not call the Ambulance and rather called his son who came after 25 minutes and called the PCR and not called the

ambulance, reflected against the veracity of the prosecution version. It has been submitted by the applicant that the height of the deceased was 5 feet as per record and the height of the floor with the roof was not mentioned and that the same thus brought forth the improbability of the commission of the alleged suicide. The applicant submits further that it could not have been ruled out that no noise had been made in the room where the suicide was committed it was not heard by the complainant and his daughter and it has been thus submitted that the entire prosecution version is faulty and defective and one sided especially as the factum of the deceased suffering from somniloquy is brought forth through the record as also the aspect of her suffering from depression. It is submitted by the applicant further that in as much as the charge sheet has been filed, there is no scope of his tampering and influencing the prosecution witnesses and no useful purpose would be served by his continuous incarceration in as much as he is languishing in jail since 06.08.2020.

18. On a consideration of the submissions that have been made on behalf of either side, the factum that the deceased hung herself on 28.02.2020 i.e. within seven (7) years from the date of her marriage which is 30.10.2019, in terms of Section 113A of the Indian Evidence Act, 1873, the requisite adverse presumption in terms of Section 304B of the Indian Penal Code, 1860 has essentially to be drawn against the applicant at this stage especially as the complainant has averred categorically to the effect that the applicant had made a phone call to the deceased on 26.02.2020 at 8:12 pm, which has been verified as per the CDR details of the mobile number 9250603808 and of the

applicant 9716461035 and qua which, the complainant had also stated in his statement on 26.02.2020, the applicant had called his daughter and when his daughter told him that she was coming to him, he said that if she came near him, he would stab her with a knife, are aspects which cannot be overlooked. The aspect of the deceased suffering from depression that is sought to be brought forth by the applicant cannot presently at this stage be considered enough to hold that the deceased had committed suicide due to any act of depression and not because of the alleged maltreatment and cruelty meted out to her by the applicant for dowry demands. The contention of the applicant that there is no live link between the alleged dowry demand and the demise of the deceased on the date 28.02.2020 presently without the cross examination of the witnesses of the prosecution cannot be determined and as observed hereinabove, the conversation between the applicant and Mr. Godson, the brother of the deceased indicate very strained relations between the applicant and his in-laws family and furthermore, the statement made by the neighbours of the deceased also indicate allegedly that the deceased was not happy with the relations with the applicant and his family members who used to harass her for dowry demands and beat her for the same.

19. In the circumstances of the case, as observed hereinabove, the requisite presumption in terms of Section 113A of the Indian Evidence Act, 1873 has essentially to be drawn against the applicant at this stage in view of the demise of the deceased within seven (7) years from the date of her marriage and thus it is not considered appropriate to grant bail to the applicant. The bail application is declined.

20. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial.

ANU MALHOTRA, J.

JUNE 14th, 2021/vm