

CASE NO.:
Appeal (crl.) 219 of 2005

PETITIONER:
M.P.Lohia

RESPONDENT:
State of West Bengal & Anr.

DATE OF JUDGMENT: 04/02/2005

BENCH:
N.Santosh Hegde & S.B.Sinha

JUDGMENT:
J U D G M E N T
(Arising out of SLP(Crl.)No.991 of 2004)
(With Crl.A.Nos 220/05 @ SLP(Crl.) No.1302/04,
& Crl.A.No 221/05 @ SLP(Crl.)No.1829/04)

SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

The appellants in these appeals have been charged for offences punishable under Sections 304B, 406 and 498A read with Section 34 of the IPC. Their applications for the grant of anticipatory bail have been rejected by the courts below. Daughter of the complainant Chandni (since deceased) was married to the appellant in the third appeal before us. Their marriage took place on 18th February, 2002. The appellants live in Ludhiana whereas the complainant and his family are residents of Calcutta. Chandni committed suicide on 28th of October, 2003 at her parents house in Calcutta. It is the case of the appellants herein that the deceased was a schizophrenic psychotic patient with cyclic depression and was under medical treatment. Though she was living in the matrimonial home often went to Calcutta to reside with her parents and she was also being treated by doctors there for the above-mentioned ailments.

While the complaint against the appellants is that they were not satisfied with the dowry given at the time of wedding and were harassing the deceased continuously, consequent to which she developed depression and even though the parents of the deceased tried to assure the appellants that they would try to meet their demand of the dowry, the deceased was being treated cruelly at her matrimonial home and her husband had no love and affection to her because of which she developed depression.

It has also come on record that the deceased had tried to commit suicide at the residence of her parents sometime in July, 2002 i.e. about a year earlier than the actual date of her death. On behalf of the prosecution as well as on behalf of the defence, large number of documents have been produced to show that the appellants were demanding dowry because of which the deceased was depressed and ultimately committed suicide. Per contra the documents from the side of the defence show that the relationship between the husband, wife and the in-laws were cordial and it was only illness of the deceased that was the cause of her premature death.

One thing is obvious that there has been an attempt on the part of both the sides to create documents either to establish the criminal case against the appellants or on the part of the appellants to create evidence to defend themselves from such criminal

charges. Correctness or genuineness of this document can only be gone into in a full-fledged trial and it will not be safe to place reliance on any one of these documents at this stage. Therefore, we would venture not to comment on the genuineness of these documents at this stage. Suffice it to say that this is a matter to be considered at the trial.

In this background the only question for our consideration at this stage is whether the appellants be granted anticipatory bail or not.

As stated above, any expression of opinion on the merits of the case except to the extent of finding out prima facie whether the appellants are entitled for anticipatory bail or not, would likely to effect the trial. Therefore, taking into consideration the entire material available on record without expressing any opinion on the same, we think it appropriate that the appellants should be released on bail in the event of their arrest on their furnishing a bail bond of Rs. 1,00,000/- (Rupees One lakh) each and one surety for the like sum by each appellants to the satisfaction of the Court or the arresting authority as the case may be. We direct that the appellants shall abide by the conditions statutorily imposed under Section 438(2) of the Code of Criminal Procedure and further direct that in the event of the investigating agency requiring the presence of the appellants for the purpose of investigation they be given one week's notice and they shall appear before such investigating agency and their presence at such investigation shall not exceed two days at a time but such interrogation shall not be a custodial interrogation. They shall be entitled to have their counsel present at the time of such interrogation.

Having gone through the records, we find one disturbing factor which we feel is necessary to comment upon in the interest of justice. The death of Chandni took place on 28th February, 2002 and the complaint in this regard was registered and the investigation was in progress. The application for grant of anticipatory bail was disposed of by the High Court of Calcutta on 13.2.2004 and special leave petition was pending before this Court. Even then an article has appeared in a magazine called 'Saga' titled "Doomed by Dowry" written by one Kakoli Poddar based on her interview of the family of the deceased. Giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The facts narrated therein are all materials that may be used in the forthcoming trial in this case and we have no hesitation that this type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who was responsible for the said article against indulging in such trial by media when the issue is subjudiced. However, to prevent any further issue being raised in this regard, we treat this matter as closed and hope that the other concerned in journalism would take note of this displeasure expressed by us for interfering with the administration of justice.

For the reasons stated above, these appeals succeed and the same are allowed.