**+ Unreportable**

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

**Bail Application Nos. 1613-1614/2006**

*Pronounced on : November 27, 2006*

# Subhan Ali & Anr. .....Petitioners

! ***through*:** Mr. L.K. Giri with Mr. M.K. Giri Advocates

*VERSUS*

$ State (NCT of Delhi) .....Respondent

^ ***through*:** Mr. M.N. Dudeja, Addl. Public Prosecutor

**CORAM :-**
***THE HON'BLE MR.JUSTICE A.K.SIKRI**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

***A.K. SIKRI, J.***

1. Shahin (for short, 'the deceased'), wife of the petitioners' son Zarif Ahmed, i.e. daughter-in-law of the petitioners, allegedly committed suicide by hanging on 31.3.2006 while she was in the house of her in-laws. She had married Zarif Ahmed on 8.5.2005 and at the time of committing suicide, she was pregnant by four months. The father of the deceased lodged FIR No. 182/2006 on 1.4.2006 blaming her in-laws for the suicide of his daughter. Allegations, in nutshell, in the said FIR are that the in-laws were not happy with the insufficient dowry

brought by the deceased at the time of marriage and were making further demands; the deceased was harassed, humiliated and tortured and because of that she committed suicide. It is in view of these allegations that FIR is registered under Sections 498-A/304-B/34 of the Indian Penal Code (hereinafter referred to as 'IPC'). Both the petitioners were arrested and they are in judicial custody since 2.4.2006. They, along with their son, applied for bail before the learned ASJ, but the same was dismissed vide order dated 3.5.2006. In these circumstances, the two petitioners have approached this Court seeking bail under Section 439 of the Code of Criminal Procedure (for short, Cr.P.C.).

2. Perusal of the FIR would show that after the marriage, when the deceased went to her matrimonial home, her husband, father-in-law, mother-in-law, *nanad* and brother-in-law complained that she had not brought a washing machine in the marriage and they demanded washing machine in dowry. She told this to her parents when she came back to her house after one day. Thereafter, when in-laws came to his house for taking her i.e. *gauna,* the complainant pleaded that he was not in a position to give washing machine, upon which they said that it was OK and they took the deceased with them. Subsequently, there was a demand of Rs.1 lakh and when the deceased said that her

parents won't be able to meet this demand, allegations of theft were levelled against her. It is alleged that because of the behaviour of the petitioners, tension developed in her mind but she was not given proper treatment and was treated in some inferior hospital. She was also assaulted. She had been coming to her parents' house and going back in regular intervals. About the incident of 31.3.2006, the complainant has stated in the FIR as under :-

> "Yesterday dated 31.3.06 when I inquired by ringing up at 2.00 Hrs. about the well being of the daughter, the Nanad Zaibunishan of my daughter said that now the relationship has been severed. Thereafter my son-in-law telephoned at 3.00 Hrs. and said to me that Shaheen is indisposed and she is refusing to take medicine from mother and at 5 Hrs. when I again asked about the well being of my daughter, her Nanad said that she is sleeping. Then I said to get me talked with her mother, when her mother refused to talk to me and then at 9.00 Hrs in the night my son-in-law telephoned that Shaheen is seriously ill, you come immediately and after saying this the telephone was kept off by him. Thereafter at 9.15 p.m. the Tau of my son-in-law rang up to me and said that Shaheen has died and when I my wife and other persons of the village came to Delhi in the morning at 5.00 Hrs. My daughter was having pregnancy of four months. In the death of my daughter we have full doubt that my daughter has not died on her own but has been killed by my son-in-law, her mother-in-law, his Nanad, father-in-law and Devar."

3. Case set-up by the petitioners is that the deceased was a mentally challenged patient and was getting regular treatment. It is for this reason that she lived most of the time at her parents' house at Bijnaur and did not wish to live in Delhi. It was only for 10 days preceding this alleged incident that she lived in her matrimonial home and herself took the drastic step to end her life by committing suicide. All the

allegations of demand of dowry or maltreatment are denied. Along with the petition, medical prescriptions and report of the mental hospitals are filed to demonstrate that the deceased was suffering from mania with psychic disease, which is recorded by the Investigating Officer also in his report dated 15.4.2006, and the statement was also recorded by the learned trial court on 22.4.2006 of Dr. Sourav from the Institute of Human Behaviour and Allied Sciences (IHBAS) in this behalf. It is pointed out that on 26.4.2006, the learned ASJ had issued direction to the Investigating Officer to examine the panchayat people as to whether the allegations as to demand of dowry were correct or not and the Investigating Officer was directed to be present on 3.5.2006. However, on that date another ASJ, without considering the earlier order passed by his predecessor, and without looking into the report submitted by the Investigating Officer and statement of the doctor recorded earlier, dismissed the application of the petitioners treating the allegations contained in the FIR as gospel truth.

4. Learned counsel for the petitioners, relying on the judgment of the Hon'ble Supreme Court in ***State of Rajasthan v. Teg Bahadur & Ors.,*** (2004) 13 SCC 300, argued that the settled proposition of law in respect of Section 304-B IPC and Section 113-B of the Indian Evidence Act, 1872 is that the initial burden of proof lies with the

prosecution to establish the ingredients of Section 304-B IPC. This burden would not shift on accused merely on the basis of prosecution alleging that death has occurred within 7 years of the marriage. Strong reliance was also placed on ***Kunhiabdulla & Anr. v. State of Kerala,*** (2004) 4 SCC 13, wherein the Apex Court held as under :-

> "A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural of accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case the presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft", is either the thief, or has received the goods knowing them to be stolen, unless he can account for its possession. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link

> between the effect of cruelty based on dowry demand and the death concerned. If alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

5. Placing reliance on ***Teg Bahadur*** (supra); ***Sham Lal v. State of Haryana,*** 1997 (9) SCC 759; and ***Yashoda & Anr. v. State of M.P.,*** 2004(3) SCC 98, it was argued that whether an attempt had been made to patch up between two sides, for which a panchayat was convened in which the matter was settled, that would be a distinguishable feature from the other cases.

6. He argued that in the present case, the application of bail has been moved by the father-in-law and mother-in-law of the deceased under Section 439 Cr.P.C., who are in Jail since 2.4.2006 on the information given by the mother-in-law to the police and to the petitioner No.1, who lives in Himachal Pradesh. As per the prosecution case, the marriage between the deceased and the son of the petitioners was solemnized on 8.5.2005 and the alleged demand of washing machine was made on the next day, i.e. on 9.5.2006, therefore, there was no direct and proximate link between the alleged demand and death on 31.3.2006. As per the prosecution case, there was panchayat on 21.3.2006 and she was taken back to Nuptial home and till 31.3.2006 nothing has come on record to show that she was either treated with cruelty or harassed with the demand of dowry during the period between her

having been taken to the home and her tragic end. Contrary to this, the deceased was being medically treated and it was the husband who telephoned at 9.00 hrs. regarding her illness and prior to that at 3.00 hrs and she was being treated for the dicease mania since 19.10.2005.

7. Reliance was also placed on the medical prescriptions of the deceased on the basis of which it was argued that the deceased was suffering from mania and psychic disorder, which was of such a nature that there was a possibility of committing suicide. It was submitted that *'mania'*, known as the bipolar disorder, developed due to genes the microscopic building blocks of DNA inside all cells and influence how mind and body work and grow pass down to the generations - MedicineNet.com on bipolar disorder mania and causes of bipolar disorder on Mania Information on Healthline, American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 4th Ed. Washington, DC. American Psyc Press Inc. 1994. As per the Black's Law Dictionary (English Edition) '*mania'* means insanity mania and potu Delirium Tremes. According to Whartons's Law Lexicon (4th Ed.) *'mania'* means alienation. Modi's Medical Jurisprudence and Taxicology (21st Ed.) mentions three types of functional insanities or psychotics, which are as under :-

> "(1) Depression illness which is of five types and one of them includes Maniac depressive psychosis;

(2) Schizophrenia; and

(3) phychosis associated with organic diseases. The first two types belong to the group of functional psychosis."

8. Learned APP for the State as well as the complainant, on the other hand, vehemently argued that there were very serious charges against the petitioners, which were taken note of by the learned trial court also, and for this reason, the petitioners should not be released on bail. It was also submitted that the manner in which the occurrence of 31.3.2006 was tried to be suppressed, as stated in the FIR, would clearly show the incriminating behaviour of the petitioners. Though learned counsel for the complainant did not dispute the treatment given to the deceased, what was sought to be argued was that it was the result of the maltreatment given to the deceased and in any case the disease is not such which would lead the person to commit suicide.

9. At this stage, we are concerned with the question as to whether the petitioners, during the period of trial, are entitled to bail or not and it would not be necessary to deal with the aforesaid contentions in detail and also give definite opinion about the mental and psychological condition of the deceased. However, it is not in dispute that the deceased was getting treatment from IHBAS. The prescription of 19.10.2005, when deceased was taken to the Department of Psychiatry in IHBAS, would show that as per the medical history there was some doubt about her *'self injurious behaviour'*. She was also

getting less sleep, i.e. it was a case of *'low sleep'.* This very prescription further mentions, at page 5, that *'Insight – Absent',* which would mean that the petitioner is not able to understand and distinguish between good and bad and was exhibiting abnormal behaviour. The medicines prescribed would also clearly show that she was a patient of psychiatric disorders. The case of the petitioners is that this was her condition even before marriage and she was under continuous treatment. The possibility of committing suicide, in view of the aforesaid medical condition of the deceased, therefore, cannot be ruled out.

10. Having regard to the aforesaid medical condition of the deceased at the time when the incident took place, coupled with the fact that the petitioners are in judicial custody since 2.4.2006 and that the investigation is complete and they are not required for interrogation as challan has also been filed on 11.6.2006, I am of the opinion that the petitioners are entitled to be released on bail. It is, accordingly, directed that the petitioners be released on bail on each of them furnishing a personal bond in the sum of Rs.20,000/- with one surety each of the like amount to the satisfaction of the trial court.

11. The aforementioned expressions are tentative in nature and the case is looked into only from the angle of granting bail and the same will have

no bearing on the trial.

12. Application is disposed of.

**(A.K. SIKRI)**
**JUDGE**

**November 27, 2006**
**nsk**