LAVESH

v.

STATE (NCT OF DELHI)

(Criminal Appeal No. 1331 of 2012)

AUGUST 31, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s.438 read with s.82 - Application for anticipatory bail by an accused declared as "proclaimed offender" in a case of dowry death - Held: Normally, court should not exercise its discretion to grant anticipatory bail in disregard of the magnitude and seriousness of the matter - When a person against whom a warrant has been issued and is absconding or concealing himself in order to avoid execution of warrant and has been declared as a "proclaimed offender", he is not entitled to the relief of anticipatory bail - On facts, the FIR and the statements recorded during investigation indicate that all the family members of husband of deceased including the appellant subjected her to cruelty by demanding a sizable amount - Even after the appellant was granted interim protection, he did not co-operate with the investigating agency - Considering his conduct not amenable for investigation and his being declared as an absconder, he is not entitled to anticipatory bail - Interim protection granted by the Court stands vacated.

An FIR was registered on the allegations that the appellant's younger brother's wife, a pregnant woman, committed suicide in the matrimonial home as she had been subjected to cruelty by the appellant and his family members with a view to demand dowry since the date of her marriage, which had taken place 1 year and eight months prior to the date of occurrence. The husband and the mother-in-law of the deceased were arrested on the

A date of registration of the FIR. The applicant's applications for anticipatory bail having been rejected by the Court of Session as also by the High Court, he filed the appeal.

Dismissing the appeal, the Court

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HELD: 1.1. While considering the request for anticipatory bail in terms of s.438 CrPC, the court has to take into consideration the nature and the gravity of the accusation, antecedents, possibility of the applicant to flee from justice etc. Further, normally, the court should C not exercise its discretion to grant anticipatory bail in disregard of the magnitude and seriousness of the matter. [para 6] [474-A-B]

1.2 In the instant case, the matter regarding the D unnatural death of the daughter-in-law at the house of her in-laws was still under investigation and the appropriate course to adopt was to allow the Magistrate concerned to deal with the same on the basis of the material before the court. The FIR, statements of various persons including the father and the mother of the deceased and E neighbours clearly show that all the family members of the husband of the deceased including the appellant, who is elder brother of the husband of the deceased, subjected her to cruelty by demanding a sizeable amount in order to settle the payment of the DDA flat. [para 6 and F 11] [474-B-C; 475-D-E]

2.1 When a person against whom a warrant has been issued and is absconding or concealing himself in order to avoid execution of warrant and has been declared as G a "proclaimed offender" in terms of s. 82 CrPC, he is not entitled the relief of anticipatory bail. The relevant materials and two status reports submitted by the police and the counter affidavit filed in this Court on 25.06.2012, indicate that the appellant has been declared a Proclaimed Offender in the case. [para 9-10] [474-G-H; H 475-A-C]

2.2 Even though this Court on 23.03.2012, while ordering notice, granted interim protection, namely, not to arrest the appellant in connection with FIR No. 259/ 2011, he is said to have not co-operated in the investigation. Considering his conduct not amenable for investigation and, moreover, his being declared as an absconder, he is not entitled to anticipatory bail as prescribed in s. 438 of the Code. The impugned order dated 05.12.2011 passed by the High Court is confirmed. The interim protection granted by this Court on 23.03.2012 stands vacated. [para 12-16] [475-F-G; 476-B-C-E-G-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1331 of 2012.

From the Judgment & Order dated 05.12.2011 of the High Court of Delhi at New Delhi in Anticipatory Bail Application No. 1602 of 2011.

Dr. Sarbjit Sharma, Sumit Sharma, S.K. Verma for the Appellant.

Sidharth Luthra, ASG, Ranjana Narain, Gargi Khanna, Shiv Pandey, Aditya Singla, B.V. Balaram Das for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is filed against the final order dated 05.12.2011 passed by the High Court of Delhi at New Delhi in Anticipatory Bail Application No. 1602 of 2011 whereby the High Court dismissed the application filed by the appellant herein.

3. Brief facts:

(a) The appellant herein is the elder brother of the husband of the deceased - Vibha. The appellant is engaged in the

A business of cutting of diamonds and getting them manufactured as per the specifications of his clients. He is married for the last seven years and has two children. According to him, he resides with his wife and children in the separate portion of the house in Paschim Puri, New Delhi whereas one portion is
B occupied by his parents and one by his younger brother.

(b) On 19.01.2010, younger brother of the appellant got married to Vibha (since deceased). He lived with his wife on the first floor of the same house. On 01.09.2011, Vibha, committed suicide. On the same day, the mother of the
C deceased lodged a complaint against the family members of the husband of the deceased with the Police Station at Punjabi Bagh, New Delhi.

(c) On the basis of the complaint, an FIR was registered
D vide No. 259/11 at Punjabi Bagh Police Station. On the same day, the husband and mother-in-law of the deceased were arrested. The appellant herein moved an application for anticipatory bail. The Additional Sessions Judge, Delhi, by order dated 05.11.2011, dismissed the said application.

E (d) Against the said order, the appellant moved an application for anticipatory bail before the High Court. By the impugned order dated 05.12.2011, the High Court dismissed the said application. Aggrieved by the said order of the High Court, the appellant preferred this appeal by way of special
F leave petition.

4. Heard Dr. Sarbjit Sharma, learned counsel for the appellant and Mr. Sidharth Luthra, learned Additional Solicitor General for the respondent-State.

G 5. The only point for consideration in this appeal is whether the appellant, who is elder brother of the husband of the deceased, has made out a case for anticipatory bail in terms of Section 438 of the Criminal Procedure Code, 1973 (hereinafter referred to as "the Code")?

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6. Before considering the claim of the appellant, it is useful to refer Section 438 of the Code relating to grant of bail to a person who is apprehending arrest which reads as under:

> "438. Direction for grant of bail to person apprehending arrest - (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-
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> (i) the nature and gravity of the accusation;
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> (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
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> (iii) the possibility of the applicant to flee from justice; and
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> (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,
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> either reject the application forthwith or issue an interim order for the grant of anticipatory bail:
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> Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application. ....."

It makes it clear that in a non-bailable offence if a person has reason to believe that he may be arrested, he is free to apply to the High Court or the Court of Session praying that in the event of such arrest, he shall be released on bail. The belief

A that the applicant may be arrested must be founded on reasonable grounds. While considering such a request, the Court has to take into consideration the nature and the gravity of the accusation, antecedents, possibility of the applicant to flee from justice etc. Further, normally, the Court should not B exercise its discretion to grant anticipatory bail in disregard of the magnitude and seriousness of the matter. The matter regarding the unnatural death of the daughter-in-law at the house of her in-laws was still under investigation and the appropriate course to adopt was to allow the concerned C Magistrate to deal with the same on the basis of the material before the Court.

7. It is seen that the deceased had allegedly committed suicide after one year and eight months of marriage and further she was pregnant at the time when she had taken her life. On D the basis of the complaint filed by the mother of the deceased, an FIR was registered and during the course of the investigation, the police recorded the supplementary statements of Hira Lal, father of the deceased, the neighbour of the deceased near the matrimonial home as well as the E complainant -mother of the deceased.

8. According to the prosecution, if we look into all the above particulars coupled with the supplementary statements, it has been clearly made out, particularly, insofar as the appellant is concerned, that there was a definite allegation F against him. Further, the appellant and other family members subjected the deceased to cruelty with a view to demand dowry, right from the date of marriage and also immediately before the date of her death.

G 9. By placing the relevant materials and two status reports submitted by the police, Mr. Sidharth Luthra, learned ASG submitted that the appellant was a Proclaimed Offender. To this effect, Mr. V. Ranganathan, Additional Commissioner of Police, West District, New Delhi, in his counter affidavit, filed in this H Court on 25.06.2012, has stated that, "Efforts were made to

arrest the petitioner but he absconded as such he was got declared a Proclaimed Offender. The case is pending trial." The same has been reiterated in the status report filed by Mr. Virender Dalal, Station House Officer, P.S. Punjabi Bagh, New Delhi, before the High Court.

10. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory bail.

11. On reading the FIR, statements of various persons including father and mother of the deceased, neighbours and supplementary statement of mother of the deceased clearly show that all the family members of the husband of the deceased including the appellant, who is elder brother of the husband of the deceased, subjected her to cruelty by demanding sizeable amount in order to settle the payment of Rs.5 lakhs of the allotted DDA flat.

12. Another circumstance against the appellant is that even though this Court on 23.03.2012, while ordering notice, granted interim protection, namely, not to arrest the appellant in connection with FIR No. 259/2011 registered at Police Station, Punjabi Bagh, New Delhi, it is the claim of the respondent-State that the appellant did not cooperate and visit the said police station. Though Dr. Sarbjit Sharma, learned counsel for the appellant, submitted that the appellant visited the police station on 23.03.2012, 20.07.2012, 24.07.2012 and 27.07.2012, it is brought to our notice that at the relevant period, viz., 07.04.2012, 01.05.2012 and 18.06.2012, he neither visited the police station nor contacted Mr. Narender Khatri, Inspector -

A Investigation, Punjabi Bagh Police Station. The last three dates are relevant since after getting the interim protection granted by this Court on 23.03.2012, the appellant did not care either to visit the police station or to the Investigation Officer concerned. The claim of his visit on later dates, particularly, in
B the month of July, 2012 have no relevance. Considering his conduct, not amenable for investigation and, moreover, declaring him as an absconder, there is no question of granting anticipatory bail. Thus, the conduct of the appellant does not entitle him to anticipatory bail as prescribed in Section 438 of
C the Code.

13. Taking note of all these aspects, in the light of the conditions prescribed in Section 438 of the Code and conduct of the appellant immediately after the incident as well as after the interim protection granted by this Court on 23.03.2012, we
D are of the view that the appellant has not made out a case for anticipatory bail. Unless free hand is given to the investigating agency, particularly, in the light of the allegations made against the appellant and his family members, the truth will not surface.

E 14. Under these circumstances, we are unable to accept the claim of the appellant. On the other hand, we agree with the contentions raised by the learned ASG and confirm the impugned order dated 05.12.2011 passed by the High Court in Bail Application No.1602/2011.

F 15. We make it clear that while upholding the rejection of the anticipatory bail, we have not expressed any opinion on the merits of the case. We also clarify that after surrender, the appellant is free to move bail application before the Court concerned which may be disposed of in accordance with law.

G 16. With the above observation, the appeal is dismissed and the interim protection granted by this Court on 23.03.2012 stands vacated. The appellant is directed to surrender within a period of one week from today.

H R.P. Appeal dismissed.