



\$~1 to 4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 503/2024 & CRL.MA. 16523/2024, CRL.M.(BAIL)**
905/2024

SURESH KR. AGGARWAL, THROUGH - PAIROKAR.....Appellant
Through: Ms. Meena Chaudhary Sharma, Mr.
Hirein Sharma, Mr. Arpit Bhalla, Mr.
Saurabh Goel, Advs.
versus

STATE NCT OF DELHIRespondent
Through: Mr. Mukesh Kumar, APP for the
State.
Insp. Ravinder Kumar, P.S. Prashant
Vihar, Insp. Naresh Dayal (R+D) & SI
Yogesh Raj (5th Battalion).

2 WITH
+ **CRL.A. 504/2024, CRL.M.A. 16561/2024, CRL.M.(BAIL)**
906/2024

SHYAMA DEVI, THROUGH – PAIROKARAppellant
Through: Ms. Meena Chaudhary Sharma, Mr.
Hirein Sharma, Mr. Arpit Bhalla, Mr.
Saurabh Goel, Advs.
versus

STATE NCT OF DELHIRespondent
Through: Mr. Mukesh Kumar, APP for the
State.
Insp. Ravinder Kumar, P.S. Prashant
Vihar, Insp. Naresh Dayal (R+D) & SI
Yogesh Raj (5th Battalion).

3 WITH
+ **CRL.A. 505/2024, CRL.M.A. 16572/2024, CRL.M.(BAIL)**
907/2024

CRL.A. 503/2024 and connected

Page 1 of 9



PRADEEP AGGARWAL, THROUGH – PAIROKAR.....Appellant

Through: Ms. Meena Chaudhary Sharma, Mr.
Hirein Sharma, Mr. Arpit Bhalla, Mr.
Saurabh Goel, Advs.

versus

STATE NCT OF DELHIRespondent

Through: Mr. Mukesh Kumar, APP for the
State.
Insp. Ravinder Kumar, P.S. Prashant
Vihar, Insp. Naresh Dayal (R+D) & SI
Yogesh Raj (5th Battalion).

4

AND

+

CRL.A. 525/2024 & CRL.M.(BAIL) 946/2024

SHIV KUMARAppellant

Through: Mr. N. Hariharan, Sr. Adv. with
Siddharth S. Yadav, Mr. Jai Singh, Mr.
Rahul Yadav, Ms. Sneha & Mr. Bakshi
Ram, Mr. Ayush Kumar Singh, Mr.
Kashish Ahuja, Ms. Sana Singh, Mr.
Sharian Mukherji & Ms. Poonya
Rekha Angara, Advs.

versus

STATE (OF NCT OF DELHI)Respondent

Through: Mr. Mukesh Kumar, APP for the
State.
Insp. Ravinder Kumar, P.S. Prashant
Vihar, Insp. Naresh Dayal (R+D) & SI
Yogesh Raj (5th Battalion).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

%

03.09.2024

1. This hearing has been done through hybrid mode.



CRL.M.(BAIL) 905/2024 in CRL.A. 503/2024
CRL.M.(BAIL) 906/2024 in CRL.A. 504/2024
CRL.M.(BAIL) 907/2024 in CRL.A. 505/2024
CRL.M.(BAIL) 946/2024 in CRL.A. 525/2024

2. The present application(s) under Sections 389(1) read with 482 of the Code of Criminal Procedure, 1973, ('CrPC') are seeking suspension of sentences of Appellants/Applicants and their release on bail during the pendency of the captioned appeals.

3. The Appellants have been convicted for commission of offences punishable under Sections 302/34 of the IPC. Additionally, Appellant namely, Shyama, Suresh and Pardeep have also been convicted for commission of offences punishable under Sections 498A/34 of the IPC.

4. The captioned appeal arises out of the facts which are as follows: -

- i) On 23.07.2014, in pursuance of DD No. 32A SI Karan Singh along with Ct. Pawan reached the place of incident i.e., C-2/26, First Floor, Sector-11, Rohini, Delhi from where they got to know that the victim had been taken to Saroj Hospital.
- ii) Thereafter, they went to Saroj Hospital, and *vide* MLC No. 2042/14, it was informed to the police officials that the deceased/victim, Ms. Savita Aggarwal, was not in a fit state to make a statement.
- iii) Later on, the deceased was shifted to Safdarjung Hospital for further treatment and on 24.07.2014 at around 01:50 AM, she was declared fit to make a statement by the doctor. Accordingly, SDM concerned reached Safdarjung Hospital and again, at around 03:35 AM on the same day, she was declared unfit to



make a statement.

- iv) Soon thereafter, *vide* DD No. 55B dated 24.07.2014, information of death of the victim was received.
- v) In the meanwhile, the police officials got the crime scene inspected by the Crime Team and took the burnt clothes and other relevant articles in their custody.
- vi) FIR No. 864/14 in the present case was registered on the complaint filed by the father of the deceased wherein he had made allegations against the Appellants regarding the demands of dowry made by the in-laws of his daughter and harassment meted to her.
- vii) After investigation in the present case, chargesheet was filed against the Appellants for the offences punishable under Sections 498A/306/34 of the IPC. Subsequently charges for offences punishable under Section 498A/306/34 of the IPC and in the alternate charges for the offences punishable under Section 302/34 of the IPC were framed against the Appellants namely, Pradeep Agarwal, Suresh Kumar Agarwal and Shyama Devi. The Appellant, Shiv Kumar, was charged for the offences punishable under Section 302/34 of the IPC. The learned Trial Court found the Appellants guilty of the offences and convicted them for the offences as noted hereinabove. Hence, the present appeal.

5. Learned counsel appearing on behalf of the Appellants - Suresh Kumar Aggarwal, Shyama Devi, and Pradeep Aggarwal, who are father-in-law, mother-in-law and husband of the deceased, respectively, submits that the



primary evidence which has been considered by the learned Trial Court for the conviction of the present Appellants is an alleged dying declaration recorded by the brother of the deceased on 24th July, 2014 at 11:43A.M. to 11:46: A.M. at Safdarjung Hospital. It is pointed out that the said dying declaration cannot be made sole basis of conviction as the same does not satisfy the necessary safeguards as has been laid down by various pronouncements of the Hon'ble Supreme Court as well as Delhi High Court Rules, Vol.III, Chapter 13-A.

6. It is further submitted that the deceased was initially admitted at Saroj Hospital and MLC prepared there (Ex.PW-11/1) shows that the deceased was unfit for making a statement and suffered 85% burns. It is also pointed out that the MLC records that Atul Gupta, who was the cousin brother of the husband, had accompanied Constable Sandeep to take the deceased to Saroj Hospital. It is argued that the deceased was shifted to Safdarjung Hospital subsequently.

7. It is submitted that there is no opinion of the doctor with regard to the evidence that the deceased was fit to make a statement as recorded by the brother of the deceased. Attention of this Court was drawn to the transcript of the dying declaration as mentioned in the impugned judgment and it was argued that the same would reflect that the response of the deceased to specific questions were a product of prompting, tutoring and leading at the instance of the other family members of the deceased, who were present along with her at the hospital.

8. It is further submitted that the transcript of the dying declaration also reflects that there was no allegation with respect to the Appellant Suresh Kumar Aggarwal, who was father-in-law of the deceased. It is also argued



that the Appellant Pradeep Aggarwal, husband of the deceased during the trial had examined himself as a defence witness and had placed on record numerous documents reflecting that the deceased was jointly owning properties along with the husband which were purchased by the family of the husband. Similarly, it was sought to be proved that the deceased was having consistent incomes in her bank accounts, some of which were transferred to the father of the deceased and investments made in certain committees.

9. It is also pointed out that Appellant Suresh Kumar Aggarwal and Shyama Devi were charge-sheeted without arrest and upon being summoned by the learned Trial Court Appellant Suresh Kumar Aggarwal was granted anticipatory bail by the learned ASJ, and appellant Shyama Devi was granted anticipatory bail by learned Single Judge of this Court, *vide* order dated 3rd December, 2014 in ***Bail Appl. 2602/2014***. So far as appellant Pradeep Aggarwal is concerned, it is pointed out that he was granted bail during the course of trial after a period of one year and remained on bail throughout the period of trial without misusing the concession granted to him.

10. Learned Senior Counsel for the Appellant Shiv Kumar submits that the latter is the maternal uncle of the husband, who was not residing along with the in-laws of the deceased and had come on the date of the incident on account of a festival. It is submitted that the transcript relied upon by the learned Trial Court with regard to dying declaration only mentions the name of the said Appellant being present at the spot without attributing any overt act. It is further submitted that in order to save the deceased, the present appellant also suffered burn injuries as borne out from the MLC Ex.PW-3/1.

11. It is pointed out that the present appellant was charge-sheeted without



arrest and was granted anticipatory bail by the learned Trial Court and was on bail throughout the period of trial and did not misuse the concession granted to him.

12. *Per contra*, learned APP for the State submits that the dying declaration of the deceased has been duly proved on record by way of an FSL report, which demonstrates that there has been no tampering of the videos. Learned APP for the State further submits that prior complaints were made by the deceased with regard to torture at the hands of the husband and in-laws and so far as appellant Shiv Kumar is concerned, she takes his name in the dying declaration with regard to being present at the spot and the same is also corroborated by the injuries suffered by him. It is further pointed out that the incident had taken place in the matrimonial home of the deceased, however, none of the Appellants had taken her to the hospital, which clearly demonstrates their guilty mind.

13. Heard learned counsel for the parties.

14. This Court, while examining the applications for suspension of sentence, has had an opportunity to peruse the records. The FIR in this case was registered in 2014 and the trial has taken nearly 10 years to conclude, this Court is of the opinion that the present appeals can be heard finally.

15. Appellant Suresh Kumar Aggarwal had already been granted medical bail *vide* order dated 2nd July, 2024 in **CRL.M.(Bail) 1010/2024**, which has been extended by this Court *vide* orders dated 25th July, 2024, 8th August, 2024, 21st August, 2024 and 29th August, 2024.

16. Keeping in view the fact that the other three Appellants being Suresh Kumar Aggarwal, Ms. Shyama Devi and Pradeep Aggarwal were on bail during the course of trial and had not misused the concession granted to them,



at this stage, the Court is of the view that the Appellants/Applicants can be granted interim bail. They are accordingly, directed to be released on interim bail, till the next date of hearing, on furnishing a personal bond of Rs. 50,000/- each with one surety of the like amount to the satisfaction of the Trial Court/Link Court, further subject to the following conditions: -

- i. The Appellants/Applicants shall not leave the country without prior permission of this Court;
- ii. The Appellants/Applicants shall intimate this Court as also the Investigating Officer by way of an affidavit regarding any change in residential address;
- iii. The Appellant/Applicant shall appear before this Court as and when the matter is taken up for hearing;
- iv. The Appellants/Applicants shall provide their mobile number to the Investigating Officer and intimate about any change.

17. The Appellant Suresh Kumar Agarwal's interim bail is extended till the next date of hearing on the same terms and conditions as specified in order dated 29th August, 2024.

18. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

19. Order be uploaded on the website of this Court *forthwith*.

20.. *Dasti*.

Crl.M.A. 16523/2024 in CRL.A. 503/2024

Crl.M.A. 16561/2024 in CRL.A. 504/2024

Crl.M.A. 16572/2024 in CRL.A. 505/2024

21. These are applications under Section 391 read with Section 482 of the Cr.P.C. for taking additional evidence of the Appellants.



22. Learned counsel appearing on behalf of the Appellants do not wish to press these applications. The same are accordingly dismissed as withdrawn and disposed of.

CRL.A. 503/2024

CRL.A. 504/2024

CRL.A. 505/2024

CRL.A. 525/2024

23. List on 4th November, 2024 for further hearing. These are part-heard matters.

PRATHIBA M. SINGH, J

AMIT SHARMA, J

SEPTEMBER 03, 2024

nk/pr