

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Bail App No. 143/2023

Pronounced on 25.04.2025

Darshana Devi & ors.

.... Petitioner/Applicants(s)

Through:- Mr. Deepak Mahajan, Advocate
Mr. Barinder Kumar, Advocate

V/s

Union Territory of J&K

.....Respondent(s)

Through:- Mr. Pawan Dev Singh, DyAG

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER

01. The applicants seek grant of anticipatory bail under Section 438 of Cr.P.C. in connection with FIR No. 54/2021 registered with Police Station Kana Chak, Jammu for the commission of offences punishable under Sections 304-B, 498-A, 306, 147, 109, 201 & 120-B Indian Penal Code.

02. On the complaint of the father of the deceased, FIR No. 54 of 2021 was registered. The complainant has alleged that his daughter deceased-Renu Bala married with applicant No. 2, who was the Central Government Employee on 10.10.2019 at Garhi, Tehsil Bhalwal, Jammu. The marriage was arranged one and at the time of marriage, the complainant had, according to his status, provided all the dowry items to the accused persons. The accused persons were not satisfied with the dowry and demanded car and for this, they started committing act of cruelty and mental harassment. The applicants have started harassing and ill-treating the daughter of the complainant and the deceased had also narrated the

episodes of mental harassment and ill treatment to the complainant on telephone. The complainant had advised his daughter to adjust herself in the matrimonial house and also not to discuss the atrocities committed by accused persons including the illegal demand of applicant No. 1.

03. It is alleged that on 04.10.2020 in the morning at around 10.00 to 10.30 AM, all the accused persons with the common intention hatched a criminal conspiracy in their house situated at Simbalayala, Samachak, Jammu and had planned the murder of Renu in a manner that the death of the deceased would seem to be as a natural death. The accused Nos. 4 & 5 i.e., applicant Nos. 4 & 5 have abetted accused No. 1 to accused Nos. 2 & 3 in the commission of the murder of Renu Devi. All the accused persons had murdered the deceased-Renu Devi in their house by torturing her and by beating her with iron rod and with sticks on both hands, chest, face and eyes. The accused persons after committing the murder of the deceased in the house in the morning put the body of the deceased in the kitchen and cut the cylinder pipe with the help of some sharp weapon and lit fire over there. Thereafter, they concocted story of death of the deceased by burning. The accused persons after committing the murder went to their respective places. Someone from adjoining area made a call to the applicant's son Pawan Kumar about the murder of the deceased which was committed by the accused persons.

04. Learned counsel for the applicants submits that applicant No. 1 is the mother-in-law of the deceased-Renu Bala; applicant No. 2 is her husband and applicant Nos. 3 & 4 are married sister-in-laws, who are living separately from the matrimonial home situated at a distance place. The

applicant No. 5 is not related to applicant Nos. 1 to 4 and she is wife of the husband of the deceased sister namely Rupali Devi of applicant Nos. 2 to 4.

05. It is also submitted that on 04.10.2020, applicant No. 2 was working at Army CSD Canteen Akhnoor where he received a call from applicant No. 1 that the deceased-Renu Bala got burn injuries due to flames of the gas stove in the kitchen. On reaching home, applicant No. 2 took Renu Bala to SDH Akhnoor where the doctor declared her brought dead. On the same day i.e., 04.10.2020, Police Station Kana Chak started inquest proceedings in terms of Section 174 of the Code of Criminal Procedure. The Inquiry officer called the applicants to the Police Station Kana Chak and made thorough inquiry in this regard. On 25.01.2021, the father of the deceased-Renu Bala namely Kamal Singh filed an application for calling status report of the inquest proceedings from the respondent and the learned Chief Judicial Magistrate, Jammu vide order 30.01.2021 directed SHO to appoint a new I.O. to further investigate and expedite the matter. The father of the deceased Renu Bala filed application under section 156(3) Cr.P.C before the learned CJM, Jammu and the same was transferred to the learned Forest Magistrate, Jammu, who vide its order dated 01.04.2021, directed the respondent to investigate the matter.

06. Learned counsel for the applicants further submits that on 18.04.2021, the Police Station registered an FIR No. 54 of 2021 for Commission of offences under sections 304-B, 498-A, 306, 147, 109, 201 & 120-B Indian Penal Code. The applicants on 07.09.2021 challenged the order passed by the learned Forest Magistrate in CRM(M) No. 501/2021, which was dismissed by this Court on technical grounds on 07.02.2023 by holding as under:

For the reasons discussed hereinabove, it cannot be construed that there was any abuse of process by the learned Magistrate to order investigation into the death of the married woman at her matrimonial home even during pendency of inquest proceedings. This Court is thus not inclined to merit and substance, is dismissed along-with connected application(s).

07. It is submitted that that there is a delay of seven months from the date of registration of the FIR in question and the currency of the inquest proceedings. The complainant in an earlier statement had sought status of the inquest proceedings but subsequently filed an application under Section 156(3) Cr. P.C. The injuries caused to the deceased by the applicants as alleged by the complainant in the present FIR are contrary to medical evidence in the Post-Mortem Examination report. The applicant No. 1 and the deceased were at home and applicant No. 2 was in his office. Applicant Nos. 3 to 5 are women having minor children are living separately, were not even present at the time of death of the deceased.

08. Learner counsel for the respondent has opposed the bail application on the ground that the deceased had died within seven years of a marriage in the matrimonial home under the circumstances when she was subjected to cruelty and harassment to repeat the dowry demands which gives rise to a strong presumption of guilt of the accused persons. It is also submitted that the applicants have resorted to commission of heinous offences, therefore, they do not deserve any concession of the bail. The investigation of the case is still going on and admitting the applicants at this stage to bail would affect the case.

09. The contention of the applicants is that they are innocent and have been falsely implicated in this case. They do not have any criminal antecedents. It is submitted, as on the date of the alleged incident, only

applicant No. 1 i.e., the mother-in-law and the deceased present at home. Applicant Nos. 2 & 3 are the sister-in-laws, who are no connection with the issue and applicant No. 4 is a stranger to the entire story. The allegation against the applicants as per the FIR is that for fulfilling the demands of the accused persons, all the accused persons with the intention of committing murder beat the deceased with the help of an iron rod and with stick by torturing her body parts i.e., in both hands, chest, face and eyes. They after committing the murder of the deceased put the body of the deceased in the kitchen cut the cylinder pipe with the sharp edged weapon with the help of some sharp weapon and put some fire over there and with common intention having concocted story of death of the deceased by burning.

10. After the death of the deceased, the inquest proceedings were initiated on the same day itself i.e., 04.10.2020 and thereafter, during the pendency of the inquest proceedings, FIR was registered on an application under section 156(3) Cr.P.C. by the father of the deceased on 23rd of March, 2021.

11. The post mortem report has been placed on record. As per the post mortem report, the external and internal injury of the deceased are as under :-

“Superficial burns (epidermal/dermsepitomal) of varying size and shape present all over the front and side of neck (2%) front of right arm (2%) over left breast (approx 1%) over front & left of forehead & face and lower lip & chin (2%), lateral aspect of left arm (2%) over the lateral aspect of left thigh (2%) and over the back of left shoulder and intersection region (2%) and over dorsum of both hand (1%). Total calculated burns surfaces approximately 14% (superficial skin burns)”.

As per the opinion of the Doctor, the cause of death of the deceased is shock due to anti mortem flame burns as alleged which is sufficient in the order into cause death in the ordinary force of nature. There are no other external injuries on the body of the deceased except to the extent of burn marks as indicated above.”

12. In **Naresh Kumar Mangla vs. Anita Aggarwal** reported as (2021) 15 SCC 777, the Court while considering an application for grant of anticipatory bail has held, “in **Siddharam Satlingappa Mhetre vs State of Maharashtra and ors.** reported as (2011) 1 SCC 694, as under:-

112 [.....]

- i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii) The possibility of the applicant to flee from justice;
- iv) The possibility of the accused's likelihood to repeat similar or the other offences.
- v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of [sections 34](#) and [149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.”

13. In **Gurbaksh Singh Sibbia etc. vs State of Punjab** reported as **1980 SCC (Cri.) 465**, it has been observed by the Hon'ble Apex Court as under :-

“7..... The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest. Police custody is an inevitable concomitant of arrest for non-bailable offences. An order of anticipatory bail constitutes, so to say, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued. In other words, unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on] bail. Section 46(1) of the Code of Criminal Procedure which deals with how arrests are to be made, provides that in making the arrest the police officer or other person making the arrest "shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action". A direction under section 438 is intended to confer conditional immunity from this 'touch' or confinement.

30..... Where the grant of bail lies within discretion of the court, granting or denial is regulated to a large extent, by the facts and circumstances of each particular case. Since the object of detention order/imprisonment of the accused is to secure his appearance and submission to jurisdiction and the judgment of the court, the preliminary enquiry is whether a recognizance or bond would yield that end. It is thus clear that the question whether to grant bail or not, depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity for justifying the grant or refusal of bail.”

14. The FIR contains recital of the allegations which is demand of dowry and the allegations that she was beaten by iron rod and stick and then burnt. These allegations are not supported by post mortem report though these observations at this stage are only prima facie in nature.

15. The death occurred on 04.10.2020 and inquest proceedings were initiated on the same day. It was only on 23.03.2021 that the father of the

deceased filed an application under Section 156(3) Cr.P.C. FIR No. 54/2021 was registered on 18.04.2021 for commission of offences under Sections 304-B, 498-A, 306, 147, 109, 201 & 120-B Indian Penal Code. The applicant Nos. 3 & 4 are sisters living separately and applicant No. 5 is not even remotely related to applicant Nos. 1 & 2 and all the applicants except applicant No. 2 were present on the day of occurrence. The death of the deceased occurred due to ante mortem flame burns and there is no external injury reflected on the body.

16. Keeping in view the aforesaid facts and also in view of the fact that the occurrence is of 2020, the applicants now submit that they are cooperating with the respondents without expressing any opinion of merits, a case for bail is made out.

17. In view of the above, this bail application is allowed. In the event of arrest of the applicants, they are directed to be released on anticipatory bail on the following conditions:-

- (i) That the applicants shall furnish personal bonds to the tune of Rs. 50,000/- each and two sureties of the like amount before the Investigating Officer.
- (ii) That the applicants shall cooperate with the investigation and shall appear before the Investigating Officer, as and when required;
- (iii) That the applicants shall not influence the prosecution witnesses or the course of investigation in any manner; and
- (iv) That the applicants shall not leave the territorial limits of Union Territory of J&K without the permission of the Investigating Officer.

18. This application stands **disposed of** accordingly.

19. It is made clear that the observation made here in above exclusively for deciding the above bail application and shall not in any way affect the trial.

(SINDHU SHARMA)
Judge

JAMMU
RAM MURTI/PS
25.04.2025

