

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Bail App No. 288/2024

Sushma Devi

..... Petitioner(s)/ Appellant(s)

Through: Mr. Anil Bhan, Advocate

vs

UT of J&K and Anr.

..... Respondent(s)

Through: Ms. Shazia Asaf, Advocate vice
Mr. P. D. Singh, Dy. AG for R- 1
Mr. Sunil Sethi, Sr. Advocate (Th. Virtual Mode)
Mr. Vishal Mahajan, Advocate for R- 2
Ms. Nandini Mehta, Advocate

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

ORDER
17.04.2026

01. Petitioner has invoked sub-Section 3 of Section 483 BNSS read with sub-Section 2 of Section 439 Cr.P.C. for the quashment of order dated 23.10.2024 passed by learned 2nd Additional Sessions Judge, Jammu [“the trial Court”], vide which respondent No.2 came to be enlarged on bail in case titled “*UT of J&K through SHO, Police Station, Satwari, Jammu vs. Chander Kant and Ors.*” under Sections 34/302 IPC.

02. As prosecution case would unfurl, on 07.06.2020 Police Station, Satwari received a written docket stating *inter alia* that accused Chander Kant Tiwari, some 08 years ago was married to deceased Rekha Devi. On 24.04.2020, deceased was invited by her mother for “Satsang” in the parental house to which her husband-accused Chander Kant was reluctant. It was alleged that on 23.04.2020, when deceased sought permission of her husband, a quarrel took place between them and her husband with the connivance of his mother and sister,

killed the deceased. On the receipt of this report, FIR No.116/2020 came to be registered and investigation culminated in a charge-sheet in the trial Court. Accused persons pleaded innocence to the charge, prompting the trial Court to ask for the prosecution evidence. Prosecution so far has examined 16 out of 36 witnesses cited in the charge-sheet.

03. A perusal of the record reveals that pending trial sister-in-law of the deceased and daughter of respondent No.2, came to be released on bail by this Court vide order dated 17.04.2023. Respondent No.2 approached the trial Court for bail on parity and vide impugned order, she came to be enlarged on bail on parity and on the ground of prolonged trial and incarceration.

04. Petitioner is aggrieved of the impugned order primarily on the ground that she was not afforded an opportunity of being heard.

05. The plea has been opposed on the other side by respondent No.2, *inter alia* on the grounds that she is 66 years of age and since all material witnesses of the prosecution, including family members of the deceased stand recorded, her incarceration will not serve any purpose of the prosecution.

06. Having heard learned counsels for the parties, I do not find any illegality or impropriety in the impugned order for the following reasons.

07. Nobody can take an exception to the settled position of law that though an extensive assessment of the prosecution evidence and elaborate documentation of merits of the case is not permissible at the stage of consideration of a bail plea, however, Court has the power to analyse prosecution evidence for the limited purpose to formulate a *prima facie* opinion about availability of reasonable grounds to believe that whether accused has committed a non-bailable offence or not.

08. Case set out by the prosecution is that when deceased sought permission of her husband-accused Chander Kant Tiwari to attend Satsang in her parental house, scuffle took place between them. All the accused persons started beating the deceased and accused Chander Kant Tiwari-husband of the deceased inflicted a blow of rod on the head of the deceased due to which she sustained grievous injuries and died on the spot. During investigation, minor son of the deceased and accused Chander Kant Tiwari stated that his grandmother, the petitioner herein, threw warm water on his mother and his aunt-accused No.3, Sunita Tiwari had dragged the deceased.

09. The child witness, who happens to be the sole eye witness to the occurrence has maintained his stand during the trial. He has stated that at the time of occurrence, his mother was caught hold by his paternal aunt and his grandmother threw warm water on his mother. When his mother tried to flee from the spot, his father inflicted a blow of rod over her head. It is manifest from the statement of sole eye witness that main allegation is on accused Chander Kant Tiwari, who is alleged to have dealt a blow of iron rod on the head of his wife-the deceased. Learned trial Court has rightly observed that entire edifice of the prosecution case revolves around the statement of child witness PW-1 and rest of the prosecution witnesses are either heresay or witnesses to the documents. Co-ordinate Bench of this Court, while considering bail plea of co-accused Sunita Tiwari, had rightly observed that implication of co-accused Sunita Tiwari is by reference to Section 34 IPC only and Mr. Sunil Sethi, learned senior counsel appearing for the applicant has rightly argued that since allegation of causing death of the deceased rests upon a blow of rod inflicted by the husband of the deceased, petitioner is entitled to bail on parity because she has also been implicated by reference to Section 34 IPC.

10. The other aspect of the matter which rightly caught attention of the trial Court is that all material witnesses of the prosecution, including family members of the deceased and sole eye witness stand examined. Respondent No.2 was arrested on 16.06.2020 and she came to be enlarged on bail by the trial Court on 23.10.2024 i.e. after about years of incarceration. She is 66 years of age stated to be suffering with multiple ailments. Rest of the prosecution witnesses are either hearsay or formal witnesses to the documents and investigating officers and it is evident from the pace with which the trial is proceeding that examination of remaining 20 prosecution witnesses is likely to take a considerable time. Therefore, in view of salutary provision of Article 21 of the Constitution of India, prosecution or for that matter complainant cannot be allowed to dilute fundamental right of the petitioner to speedy trial and personal liberty.

11. For the foregoing reasons, I do not find any illegality or impropriety in the lucid and well-reasoned impugned order, by virtue of which respondent No.2 came to be enlarged on bail by the trial Court.

12. Hence, present petition is dismissed and impugned order is upheld.

13. Disposed of accordingly.

(Rajesh Sekhri)
Judge

Jammu
17.04.2026
Riya Kochhar