

Narendra Singh vs State Of Rajasthan on 28 November, 2024

Author: Kuldeep Mathur

Bench: Kuldeep Mathur

[2024:RJ-JD:47656]

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR
S.B. Criminal Miscellaneous Bail Application No. 13570/2024

Narendra Singh S/o Sh. Shankar Singh, Aged About 38 Years, R/
o Village Radwa, P.S. Sadar, Barmer, Dist. Barmer (Raj.)
(Presently Lodged In Dist. Jail, Barmer)

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

For Petitioner(s)	:	Mr. Pradeep Shah Mr. Karan Singh Rajpurohit Mr. Mayank Rajpurohit
For Respondent(s)	:	Mr. Sharwan Singh Rathore, Dy.GA. Mr. Muktesh Maheshwari, counsel for the complainant Mr. Som Karan, CI, I.O., SHO Chohtan, Barmer

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order 28/11/2024

1. This application for bail under Section 439 Cr.P.C. (483 BNSS) has been filed by the petitioner who has been arrested in connection with F.I.R. No.88/2024, registered at Police Station Mahila Thana (Barmer), District Barmer, for offences under Sections 85, 108, 115(2) and 238(b) of BNS.

2. As per the prosecution, the complainant- Zorawar Singh filed a typed complaint before the Superintendent of Police Barmer, alleging inter alia that his daughter deceased - Smt. Pushpa was married to the present petitioner on 31.01.2013 and one daughter- Garima @ Jyoti was born after three years of their wedlock. After about a year of her marriage, her husband [2024:RJ-JD:47656] (2 of 13) [CRLMB-13570/2024] Narendra Singh (present petitioner), brothers-in-law- Ganpat Singh @ Shaitan Singh, Taneraj Singh, Mang Singh @ Mangal Singh, Sumer Singh, father-in-law- Shankar Singh S/o Bijraj Singh and mother-in-law- Smt. Bhanwari Devi W/o Shankar Singh started harassing her for bringing less dowry and even made her undergo abortions on two occasions.

Thereafter, when the complainant questioned their actions, they promised not to repeat the same. In the aforesaid complaint, aspersions have been cast upon the petitioner that he had an extra marital affair and often used to fight with the deceased- Smt. Pushpa on this count. The deceased- Smt. Pushpa was harassed and often beaten by the present petitioner and his family members in pursuance of demand of dowry.

3. It has further been alleged in the complaint that on 19.07.2024, at about 12:00 noon, the aforesaid family members of the deceased- Smt. Pushpa tied her up, beat her and caused injuries to her neck. Thereafter, assuming her to have died, in order to destroy the evidence of their crime, poured flammable substance over her face and body and set her to fire. As per the complainant, the accused persons, with an intention to destroy the evidence and to mask the case as a suicide, instead of taking her straight to the Government Hospital at Barmer, with an excuse to take her to a private hospital i.e. Goyal Hospital at Jodhpur kept taking rounds for about 5-7 hours and thereafter only at 1:00 am in the night brought her to the Government Hospital, Barmer where the doctors declared her dead. It has further been alleged that even then, they did not inform the complainant party of the [2024:RJ-JD:47656] (3 of 13) [CRLMB-13570/2024] aforementioned events and the news of the death of his daughter came to him through third persons only on the next day of the incident i.e. on 20.07.2024. The complainant in the complaint has further stated that on 20.07.2024, he along with his elder brother went to the Mortuary at Government Hospital, Barmer where they saw various injuries upon the neck and other parts of body of the deceased- Smt. Pushpa, however, her hair, chest and her clothes were not completely burnt. He has thus alleged that the petitioner along with his family killed his daughter- Smt. Pushpa on account of demand of dowry and to undergo a second marriage and since the father- in- law of the deceased Smt. Pushpa is a retired police officer, a clear case of murder has been converted to that of suicide. On the basis of the aforesaid complaint, the present FIR was lodged and after making investigation in the matter, the investigating agency has filed a challan on 27.09.2024.

4. Learned counsel for the petitioner- Shri Pradeep Shah submitted that the petitioner has been falsely implicated in the present case. Learned counsel submitted that the investigation in the matter has already been concluded and the challan has already been filed by the investigating agency against the petitioner for the offences punishable under sections 85, 108, 115(2) and 238(b) of BNS. Drawing attention of the Court towards the charge-sheet, learned counsel submitted that the investigating agency after conducting a thorough investigation in matter has not found any direct or corroborative evidence with respect to demand of dowry. It was urged that the family members of the petitioner have not even been charge-sheeted as accused in the [2024:RJ-JD:47656] (4 of 13) [CRLMB-13570/2024] matter and thus the version deposed by the complainant is completely false. Learned counsel further submitted that for the incident which occurred on 19.07.2024, the FIR has been lodged only on 26.07.2024 and no explanation whatsoever has been furnished by the prosecution with respect to the same.

5. Further, drawing attention of the Court towards the statements of Ms. Garima @ Jyoti recorded under sections 180 and 183 of BNSS, learned counsel submitted that the daughter of the deceased- Smt. Pushpa has categorically stated that on the day of the incident, the deceased had first tried to strangle her and later on when she pushed her and came out of the room, her mother locked

herself inside the room and made an attempt to commit suicide. Learned counsel submitted that as per the statements of the child witness- Garima, the present petitioner broke inside the room to save her and bring her out whereupon she saw her mother in a burnt condition.

6. Learned counsel further urged that there is not even an iota of evidence available on the face of the record of the case to substantiate the fact that the deceased was met with cruelty at the hands of the petitioner. Lastly, learned counsel submitted that the investigation in the matter has already been completed and no recoveries are due to be made from the petitioner; the petitioner is in judicial custody and the trial of the case will take sufficiently long time, therefore, the benefit of bail should be granted to the accused-petitioner. On the strength of these contentions and arguments, learned counsel for the petitioner implored the Court to enlarge the petitioner on bail.

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7. Per contra, learned Public Prosecutor Shri Shrawan Singh Rathore and learned counsel for the complainant Shri Muktesh Maheshwari have vehemently opposed the present bail application.

8. Learned counsel for the complainant, Shri Muktesh Maheshwari vehemently submitted that the present matter manifestly reeks of faulty investigation where a clear case of murder has been showcased initially as accidental death and later on has been given a color of suicide by the investigating agency. Shri Muktesh Maheshwari vehemently contended that though it is true that the charge-sheet has been filed against the petitioner for an offence punishable under section 108 of the BNS, however, a perusal of the record of the case would clearly indicate that the deceased Smt. Pushpa was killed/ murdered by the petitioner along with his family and the investigating agency has not fulfilled its task with utmost integrity and good faith.

9. To substantiate these contentions, learned counsel for the complainant Shri Muktesh Maheshwari drew the attention of the Court towards the statements of Dr. Vikas Kumar recorded under section 180 of BNS. Learned counsel submitted that Dr. Vikas Kumar is the doctor who gave primary treatment to the deceased- Smt. Pushpa Kanwar and he has clearly stated that on 19.07.2024, at about 4:34 pm, he had attended the burn case of a woman named Pushpa Kanwar, who was accompanied by two men and two women. She was initially conscious and was burnt upto 60-70 percent and was repeatedly stating that her face had become disfigured. She was thus referred to be admitted at higher [2024:RJ-JD:47656] (6 of 13) [CRLMB-13570/2024] centre by him. Learned counsel submitted that Dr. Vikas Kumar has clearly stated that upon being asked of the reason of the burns, Narendra Singh had stated that she had gotten injuries due to leakage from the safety valve of the cylinder and the incident was told to have occurred about half an hour prior to the treatment. Learned counsel further contended that it is highly unnatural that when the doctor who gave the primary treatment to Smt. Pushpa Kanwar had clearly referred her to higher centre, instead of taking her immediately to Government Hospital, Barmer, the petitioner allegedly proceeded to take her to Goyal Hospital Jodhpur which is situated at a distance of more than 200 kms, where on the way the victim succumbed to her injuries. In this regard, attention was also drawn towards the written report submitted by the accused- Narendra Singh to the SHO PS Barmer wherein he has stated that the victim died on the way to Goyal Hospital Jodhpur. Learned counsel contended that

the culpability of the accused- petitioner and his family members is further highlighted from the fact that if at all she was conscious at the time of primary treatment, they should have informed the police or the complainant and his family members in time so that her statements/ dying declaration could have been recorded.

10. Learned counsel for the complainant vehemently contended the entire case of the prosecution has been fabricated to save the petitioner as no other witness apart from the daughter of the deceased- Garima who is only about 9 years of age, has been examined by the prosecution to substantiate the factum of suicide of the deceased Smt. Pushpa Kanwar. Learned counsel submitted [2024:RJ-JD:47656] (7 of 13) [CRLMB-13570/2024] that the investigating agency has failed entirely in its duty to bring out the truth of the case as no source/ equipment of starting fire has been found from the place of incident. It was further submitted that the witness- Garima was in the company of the family members of the petitioner from the date of the incident to the date when her statements under various sections of CrPC were recorded, and the possibility of tutoring cannot be ruled out, particularly when she also received a bruise upon her neck in the alleged incident.

11. Learned counsel for the complainant thus contended that since the investigation in the matter has not been conducted in a fair manner and since the witness Garima is in the company of the family members of the petitioner, the possibility of the petitioner influencing her or tampering with the evidence cannot be ruled out at this stage and thus he does not deserve to be enlarged on bail.

12. Heard learned counsel for the petitioner, learned Public Prosecutor as well as learned counsel for the complainant. Perused the material available on record.

13. Having considered the rival submissions, facts and circumstances of the case, and upon a perusal of the challan papers as well as the documents annexed therewith, this Court prima facie finds that the challan against the petitioner has been filed for the offences punishable under sections 85, 108, 115(2) and 238(b) of BNS and the petitioner or any of his family members have not even been charge-sheeted for the offence under section 103 of BNS.

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14. The Hon'ble Supreme Court of India in the case of "Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.":

(2004)7 SCC 528 while explaining the parameters for grant of bail has held as under:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also

necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are: (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence. (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant. (c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338: 2001 SCC (Cri) 1124] .)"

Similarly, in the case of "Prashanta Kumar Sarkar v. Ashish Chatterjee and another" : (2010) 14 SCC 496, the Hon'ble Supreme Court has held as under:

"9. ... However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

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(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail."

15. It is pertinent to mention here that from a careful perusal of the record of the case, this Court finds that two pertinent proceedings for bringing out the truth in the present case were initiated in the present matter. The first was in the form of inquest proceedings under section 194 of BNSS, initiated upon the written report presented by the petitioner- Narendra Singh and the second was in the form of investigation conducted in the matter, initiated pursuant to the complaint presented by the complainant- Zorawar Singh. This court prima facie finds that from both the proceedings so initiated in the matter, it is evident that the deceased Smt. Pushpa died in unnatural circumstances in her matrimonial home. In view of the aforementioned cited precedent law, the lis for consideration before this Court is a consideration of the bail application presented by the petitioner- Narendra Singh and in light of the same, this Court need not delve into the merits of the case. Since, prima facie, the charge-sheet in the matter has been filed against the accused for the offences punishable under sections 85, 108, 115(2) and 238(b) of BNS, this Court has to identify whether or not the benefit of bail can be extended to the accused in light of the offences alleged against him. [2024:RJ-JD:47656] (10 of 13) [CRLMB-13570/2024]

16. The Hon'ble Supreme Court in the case of "M. Arjuna vs. State, represented by its Inspector of Police", reported in (2019) 3 SCC 315, while considering the ingredients of the offence under section 306 IPC (now section 108 BNS) held as under:-

"The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment, (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C."

Further in the judgment rendered in the case of "S.S. Cheena Vs. Vijay Kumar Mahajan & Anr." reported in (2010)12 SCC 190, the Hon'ble Supreme Court while deciding a criminal appeal held that the offence abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive overt act on the part of the accused to instigate or aid in the commission suicide by the victim, his conviction cannot be sustained.

17. In view of the aforesaid, on the basis of the material at present available on record, this Court prima facie finds that there is nothing therein to indicate any overt act or inaction on the part of the accused to have facilitated or instigated the deceased- Smt. Pushpa in commission of suicide. This Court also finds that the investigation against the petitioner is already complete and the challan against him has already been filed; no recoveries are due to be made from him; and the statements of the child witness [2024:RJ-JD:47656] (11 of 13) [CRLMB-13570/2024] Garima under section 183 of BNSS have already been recorded before the competent criminal Court. Therefore, without considering and commenting upon the merits and demerits of the case, this Court is inclined to enlarge the petitioner on bail.

18. Consequently, the bail application under Section 439 Cr.P.C. (483 BNSS) is allowed. It is ordered that the accused-petitioner- Narendra Singh S/o Sh. Shankar Singh, arrested in connection with F.I.R. No.88/2024, registered at Police Station Mahila Thana (Barmer), District Barmer, shall be released on bail, if not wanted in any other case, provided he furnishes a personal bond of Rs.50,000/- and two sureties of Rs.25,000/- each, to the satisfaction of learned trial Court, for his appearance before that Court on each & every date of hearing and whenever called upon to do so till completion of the trial.

19. Further, keeping in view the submissions made on behalf of the learned counsel for the complainant, this court prima facie also finds that the entire charge-sheet is silent of the fact as to why the paternal family members of the deceased were not informed until the very next day of the incident. The charge-sheet is also silent of the fact as to how it was safe to rely upon the testimony of Ms. Garima who is aged only 9 yrs as the possibility of she being tutored by the family members of the petitioner cannot be ruled out at this stage. The investigating agency has further not recorded any finding of the fact as to what actually transpired after the deceased Smt. Pushpa was referred to higher centre by the doctor at Thar Hospital, Barmer. Upon a perusal of the statements of Dr. Vikas

Kumar recorded under section 180 of [2024:RJ-JD:47656] (12 of 13) [CRLMB-13570/2024] BNSS, as well as the written report dated 20.07.2024 submitted by the petitioner to the SHO Police Station Barmer, this court prima facie finds that initially the petitioner had alleged that the deceased died due to accidental burns from leakage of faulty valve of the cylinder, however, the investigating agency after conducting the investigation in the case has found it to be suicide, irrespective of the fact that no equipment/ object for starting fire has been recovered from the place of incident. This Court thus prima facie also finds that there are material infirmities/ loopholes in the chargesheet which bring the entire investigation proceedings as well as the case of the prosecution under a grave shadow of doubt and in view thereof, prolonged incarceration of the petitioner in the matter cannot be allowed to continue.

20. In that view of the matter, let the record of the case along with a copy of the charge-sheet and the documents annexed therewith be placed before the Superintendent of Police, Barmer who shall look into the matter personally and pass necessary orders for further investigation/ re-investigation into the matter in accordance with law.

21. Further, in view of the oral submissions made by the learned counsel for the complainant, let a copy of this order be placed before the learned trial Court and the learned counsel for the complainant is at liberty to file appropriate application before the trial Court seeking fresh/further investigation in the matter. It is expected from the trial court that the application, if any, preferred by the complainant would be decided by the learned trial Court as expeditiously as possible without any unnecessary adjournments.

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22. It is made clear that the findings recorded/ observations made above are for limited purposes of adjudication of bail application. The trial Court shall not get prejudiced by the same.

(KULDEEP MATHUR),J 106-himanshu/-

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