

Mohammed Ismail And Anr vs The State Of Karnataka And Anr on 8 August, 2024

Author: K Natarajan

Bench: K Natarajan

- 1 -

NC: 2024:KHC-K:5801
CRL.P No. 201005 of 2024

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 8TH DAY OF AUGUST, 2024

BEFORE
THE HON'BLE MR JUSTICE K NATARAJAN

CRIMINAL PETITION NO.201005 OF 2024 (438)
BETWEEN:

1. MOHAMMED ISMAIL S/O MOHAMMED HAYAT,
AGED 26 YEARS, OCC: AGRICULTURE,
R/O GHODWADI, TQ. HUMNABAD,
DIST. BIDAR-585418.
2. MOHAMMED HAYAT S/O MOHAMMED MASTAN SAB,
AGED 53 YEARS, OCC: AGRICULTURE,
R/O GHODWADI, TQ. HUMNABAD,
DIST. BIDAR-585418.

...PETITIONERS

(BY SRI. SANTOSH KUMAR B. BIRADAR, ADVOCATE)

AND:

Digitally signed
by KHAJAAMEEN
L MALAGHAN
Location: High

THE STATE OF KARNATAKA
BY HUMNABAD PS REP. BY
THE ADDL. STATE PUBLIC PROSECUTOR,

Court Of
Karnataka

HIGH COURT OF KARNATAKA, KALABURAGI

(BY SRI. F. M. INAMDAR HCGP)

...RESPONDENT

THIS CRIMINAL PETITION IS FILED U/S. 482 OF BHARATIYA
NAGARIKA SURAKSHA SANHITA, 2023 (NEW) PRAYING TO BE

ENLARGED ON BAIL IN THE EVENT OF THEIR ARREST IN CRIME NO.0103/2024 REGISTERED BY THE HUMNABAD POLICE, AND PENDING ON THE FILE OF PRL. CIVIL JUDGE (JR.DN.) AND JMFC COURT, HUMNABAD, BIDAR DISTRICT FOR THE OFFENCE PUNISHABLE UNDER SECTION 108, 3(5), 80(2) AND 85 OF BHARATIYA NYAYA SANHITA, 2023 (BNS).

THIS PETITION, COMING ON FOR ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

- 2 -

NC: 2024:KHC-K:5801

CRL.P No. 201005 of 2024

CORAM: HON'BLE MR JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR JUSTICE K NATARAJAN) This petition is filed by the petitioners-accused Nos.1 and 2 under Section 482 of Bharatiya Nagarika Suraksha Sanhita (for short, hereinafter referred to as 'BNSS'), 2023 seeking anticipatory bail in Crime No.103/2024 registered by Humnabad Police Station, for the offences punishable under Sections 108, 3(5), 80(2), 85 of Bharatiya Nyaya Sanhita (for short, hereinafter referred to as 'BNS'), 2023.

2. Heard learned counsel for the petitioners and learned High Court Government Pleader for the respondent-State.

3. The case of the prosecution is that on the complaint of one Tojoddin-father of the deceased/Saniya, the police registered a case on 09.07.2024, wherein it is alleged that his younger daughter-Saniya aged about 20 years married to accused No.1 on 26.02.2024 as per NC: 2024:KHC-K:5801 Mohammedan rights and customs. After the marriage the deceased was taken to the matrimonial house at Hyderabad by the accused Nos.1 to 3. After 2-3 days the accused No.1 brought her back and by demanding 10 tolas of gold, Rs.5.00 lakh cash and bullet motorcycle as dowry, as they are not given anything at the time of marriage. He has not taken the deceased to matrimonial home. Thereafter accused No.1 said to be telephoned to the daughter often and often and demanding the money, gold as well as bullet motorbike. Even the accused No.3 said to be threatened to go for another marriage stating that the complainant not given any dowry at the time of marriage. About 2-3 days prior to the incident, the accused No.2 came to the house of the complainant and told until they gave dowry articles within 2-3 days, they will not take her back to matrimonial home and left after quarrel. Subsequently on 08.07.2024 in the night hours the deceased contacted her husband over mobile phone and there was verbal quarrel between them and heat of passion, the deceased said to be thrown the phone and NC: 2024:KHC-K:5801 broke it and she was on depression. On 09.07.2024 at about 10:00 a.m. deceased said to be committed suicide by hanging in the house, immediately, they removed from the hanger and they shifted her to the hospital, but doctors have declared that she was already dead. Hence, they went to Police Station

and lodged the complaint. They have also stated that the deceased has left the death note by telling that the accused are responsible for causing the death. Accordingly, the police received the FIR and they are trying to arrest the petitioners. Hence, accused No.1 to 3 husband and parents in-law of the deceased have apprehending the arrest in the hands of the police, hence, they approached the II-Addl. Dist. & Sessions Judge, Bidar sitting at Basavakalyan under Section 482 of BNSS where the Sessions Judge allowed the petition in-pat by granting anticipatory bail to accused No.3/the mother- in-law, but dismissed the bail petition of both these petitioners/accused No.1 and 2. Hence, they approached this Court.

NC: 2024:KHC-K:5801

4. Learned counsel for the petitioners has contended that the deceased was died by hanging. There is no proper conversation recorded or collected by the police to show what made the deceased to commit suicide in the parents house. Even otherwise the parents of the deceased without intimating the police, they shifted the dead body, which is not correct. The mind of the deceased should be ascertained by the police at the time of investigation and reason for committing suicide is matter of trial. The petitioners are innocents of the alleged offences and there is no demand and acceptance of any dowry at the time of marriage. Therefore, prayed for granting anticipatory bail.

5. Per contra, learned High Court Government Pleader seriously objected the petition and contended that within span of six months deceased has committed suicide due to the mental and physical harassment in respect of demanding dowry. Hence, prayed for dismissal of the petition.

NC: 2024:KHC-K:5801

6. Having heard learned counsel for the parties and on perusal of the records, it reveals that there is no allegation against the petitioners for having demanded any dowry prior to the marriage or at the time of marriage and the marriage was held on 26.02.2024 and within span of six months the deceased has committed suicide in the house of parents and she has also left death note against the in-laws as well as husband. The complainant-father of the deceased-Saniya has stated that after 2-3 days of the marriage the accused No.1 brought the deceased back to the parents house and left her stating that they have not given any dowry articles and therefore, he has demanded ten tolas of gold, Rs.5.00 cash and a bullet motorcycle, otherwise he will not taken her back to the matrimonial home and he left to Hyderabad. Subsequently, accused No.1 said to be continuously demanding the dowry both cash, gold and motorcycle and continuously harassing through phone. Even accused No.3 said to be told that she is not fair and nothing given at the time of marriage. Therefore, she also harassed. However, 2-3 days prior to NC: 2024:KHC-K:5801 the incident, the accused No.2 said to be came to the house and told until they give the gold, cash and bullet motorcycle within 2-3 days the deceased will not be taken to the matrimonial home and by quarreling with the family of the deceased, the accused No.2 left back to Hyderabad. On the night of 08.07.2024 at 7:00 p.m. the deceased contacted the accused No.1 through telephone, there was conversation between the accused and deceased and immediately after the conversation, the deceased said to be thrown the phone and broken the mobile due to the anger and quarrel between the accused and the deceased and very next day she had committed suicide by leaving death note. The death was occurred within six months of

their marriage due to dowry harassment. As per Section 80 of the BNS the death considered to be a dowry death as it is occurred within seven years of the marriage and it is unnatural death. The Section 85 is nothing but cruelty on the married woman the earlier 498A of IPC and Section 108 is abetment of suicide the earlier 306 of IPC.

NC: 2024:KHC-K:5801

7. There is prima facie materials placed against the accused persons for having demand of dowry and harassment of the deceased within six months of their marriage, due to which she has committed suicide. The petitioners are required for custodial interrogation and to retrieve the mobile conversations for the investigation by the police. Though the contention of the learned counsel for the petitioners that parents of the deceased could have intimated the police and they should not have shifted the deceased to the hospital is not correct, when the parents are trying to save the life of the deceased they have taken the deceased to hospital, that cannot be a ground for granting bail. The offences are very serious in nature, the death was occurred within six months of their marriage for harassment of dowry that amounts to dowry death. The presumption available for the prosecution as per Section 118 of the Bharatiya Sakshya Adhiniyam, 2023. Such being the case, the petitioners are not entitled for anticipatory bail.

NC: 2024:KHC-K:5801

8. Accordingly, the petition filed by the petitioners/accused Nos.1 and 2 is hereby dismissed.

Sd/-

(K NATARAJAN) JUDGE SDU CT:SI