

PREET PAL SINGH

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v.

THE STATE OF UTTAR PRADESH & ANR.

(Criminal Appeal No. 520 of 2020)

AUGUST 14, 2020

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[ARUN MISHRA AND INDIRA BANERJEE, JJ.]

Code of Criminal Procedure, 1973:

s.389 – Grant of bail – Post conviction – Conviction of the appellant-accused for the offences u/ss. 498A, 304B, 406 IPC and u/ss. 3 and 4 of Dowry Prohibition Act and sentenced to life imprisonment and sentences of 5 years and 3 years – During pendency of appeal before High Court, application u/s. 389 seeking grant of bail during pendency of appeal – Bail granted by High Court – Appeal to Supreme Court – Held: Once there is conviction upon trial, the Court while considering the application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal coupled with other factors – There should be strong and compelling reason for grant of bail and such reason must be recorded in writing – Prima facie trial Court had proceeded on the basis of evidence and the appellant-accused was not able to make out a case of any patent infirmity or illegality in the order of trial Court – High Court casually suspended the execution of sentence and granted bail to appellant-accused without recording any reason, ignoring the evidence relied upon by the trial Court.

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*ss. 389 and 439 – Grant of bail under – Distinction between
– Discussed.*

Penal Code, 1860:

s.304B – Offence under – Object, nature and essential ingredients for attracting the provision – Discussed.

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Words and Phrases:

‘Dowry’ – Meaning of.

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A **Allowing the appeal, the Court**

- HELD:** 1. Section 389 Cr. P.C. provides that pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against, be suspended and, also, if he is in confinement, that he be released on bail. Of course, in view of the mandate of Section 389(3) of the CrPC, the principles are different in the case of sentence not exceeding three years and/or in the case of bailable offences. In the present case, none of the offences, for which respondent No. 2 has been convicted, are bailable. Moreover Respondent No.2 has, *inter alia*, been given life imprisonment for offence under Section 304B of the IPC and imprisonment for five years for offence under Section 3 of the Dowry Prohibition Act. [Para 26][978-A-C]
2. As the discretion under Section 389(1) is to be exercised judicially, the Appellate Court is obliged to consider whether any cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and whether there is likelihood of unreasonable delay in disposal of the appeal. [Para 27][978-C-D]
- E *Kashmira Singh v. State of Punjab (1977) 4 SCC 291 : [1978] 1 SCR 385; Babu Singh and Ors. v. State of U.P. (1978) 1 SCC 579 : [1978] 2 SCR 777 – relied on.*
3. Even though detailed examination of the merits of the case may not be required by courts while considering an application for bail but, at the same time, exercise of jurisdiction has to be based on well settled principles and in a judicious manner and not as a matter of course. [Para 32][979-F]
- G *Kalyan Chandra Sarkar v. Rajesh Ranjan and Anr. (2004) 7 SCC 528; Chaman Lal v. State of U.P. and Anr. (2004) 7 SCC 525 : [2004] 3 Suppl. SCR 584 – relied on.*
4. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of

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sentence under Section 389 of the CrPC and grant of bail, post conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception. However, in case of post conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the *prima facie* merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C. [Para 36][980-D-F]

Mauji Ram v. State of Uttar Pradesh and Anr. (2019) 8 SCC 17 : [2019] 10 SCR 321; Ajay Kumar Sharma v. State of U.P. and Ors. (2005) 7 SCC 507; Lokesh Singh v. State of U.P. and Anr. (2008) 16 SCC 753 : [2008] 14 SCR 980; Dataram Singh v. State of U.P. and Anr. (2018) 3 SCC 22 : [2018] 1 SCR 882; Vinod Singh Negi v. State of Uttar Pradesh and Anr. (2019) 8 SCC 13 – relied on.

5. In considering an application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction *prima facie* erroneous. Where there is evidence that has been considered by the Trial Court, it is not open to a Court considering application under Section 389 to re-assess and/or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail. [Para 39][981-C]

6. It is nobody's case that the death of the victim was accidental or natural. There is evidence of demand of dowry, which the Trial Court has considered. The death took place within 7 or

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- A **8 months and there is oral evidence of the parents of cruelty and torture immediately preceding the death. There is also evidence of payment of Rs.2,50,000/- to the Respondent-Accused by the victim's brother. The Respondent No.2 has not been able to demonstrate any apparent and/or obvious illegality or error in the judgment of the Sessions Court, to call for suspension of execution of the sentence. From the evidence of the Prosecution witnesses, it transpires that the Appellant had spent money beyond his financial capacity, at the wedding of the victim and had even gifted an I-10 car. The hapless parents were hoping against hope that there would be an amicable settlement. Even as late as on 17.6.2010 the brother of the victim paid Rs.2,50,000/- to the Respondent No.2. The failure to lodge an FIR complaining of dowry and harassment before the death of the victim, is inconsequential. The parents and other family members of the victim obviously would not want to precipitate a complete break down of the marriage by lodging an FIR against Respondent No.2 and his parents, while the victim was alive. [Paras 38 and 42][980-G; 981-A-B, G-H; 982-A-B]**
- B **7. Section 304B was incorporated in the IPC by the Dowry Prohibition (Amendment) Act, 1986 (Act 43 of 1986). The object of the amendment was to curb dowry death. Section 304B does not categorize death, it covers every kind of death that occurs otherwise than in normal circumstances. Where the other ingredients of Section 304B of IPC are satisfied, the deeming fiction of Section 304B would be attracted and the husband or the relatives shall be deemed to have caused the death of the bride. The essential ingredients for attraction of Section 304B are: (i) the death of woman must have been caused in unnatural circumstances (ii) the death should have occurred within 7 years of marriage (iii) Soon before her death the woman must have been subjected to cruelty or harassment by her husband or his relatives and such cruelty or harassment must be for or in connection with the demand for dowry, and such cruelty or harassment is shown to have been meted out to the woman soon before her death. Once there is material to show that the victim was subjected to cruelty or harassment before death, there is a presumption of dowry death and the onus is on the accused in laws to show otherwise. The death in this case took place within**
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8½ months of marriage. There is apparently evidence of harassment of the victim for dowry even on the day of her death, and there is also evidence of payment of a sum of Rs.2,50,000/- to the respondent-accused by the victim's brother, two months before her death. [Paras 28-30][978-E-G; 979-A-C] A

State of Punjab v. Iqbal Singh & Ors. (1991) 3 SCC 1 : [1991] 2 SCR 790 – relied on. B

8. It is difficult to appreciate how the High Court could casually have suspended the execution of the sentence and granted bail to respondent No.2 without recording any reasons. In effect, at the stage of an application under Section 389 of the CrPC, the High Court found merit in the submission that the brother of the victim not having been examined, the contention that the amount of Rs.2,50,000/- was taken as a loan was not refuted, ignoring the evidence relied upon by the Sessions Court, including the oral evidence of the victim's parents. [Para 41] [981-E-G] C D

Case Law Reference

[1978] 1 SCR 385	relied on	Para 27	
[1978] 2 SCR 777	relied on	Para 27	E
[1991] 2 SCR 790	relied on	Para 30	
(2004) 7 SCC 528	relied on	Para 31	
[2004] 3 Suppl. SCR 584	relied on	Para 32	
[2019] 10 SCR 321	relied on	Para 33	F
(2005) 7 SCC 507	relied on	Para 33	
[2008] 14 SCR 980	relied on	Para 33	
[2018] 1 SCR 882	relied on	Para 33	
(2019) 8 SCC 13	relied on	Para 37	G

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 520 of 2020.

From the Judgment and Order dated 21.01.2019 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Crl. Misc. Application No. 129789 of 2018 in Criminal Appeal No. 1594 of 2018. H

- A V. K. Shukla, Sr. Adv., Vishwajit Singh, Ms. Ridhima Singh, Ms. Veera Kaul Singh, Pankaj Singh, Vignesh Singh, P. B. Suresh, Vipin Nair, Karthik Jayashankar, Adarsh Upadhyay, Abhitosh Pratap Singh, Advs. for the appearing parties.

The Judgment of the Court was delivered by

B **INDIRA BANERJEE, J.**

1. Leave granted.

2. This appeal, filed by the father of the deceased victim, is against the order dated 21.01.2019 passed by the Allahabad High Court, Lucknow

- C Bench in Criminal Misc. Application No. 129789 of 2018, in Criminal Appeal No. 1594 of 2018, whereby the High Court granted bail to the Respondent No.2, Sandeep Singh Hora, husband of the deceased victim, convicted by a judgment dated 23.7.2018 of the Additional District and Sessions Judge/Special Judge (EC Act), Lucknow, hereinafter referred to as the “Sessions Court” in Sessions Trial No.1385 of 2010, for offences

- D under Sections 304B, 498A and 406 of the Indian Penal Code (IPC) and Sections 3 and 4 of the Dowry Prohibition Act, 1961 by staying execution of the sentences of imprisonment.

3. By an order dated 23.7.2018 in Sessions Trial No.1385 of 2010 the Sessions Court sentenced the Respondent No.2 to Simple

- E Imprisonment of 3 years and fine of Rs.10,000/- under Section 498A of the IPC and in default of payment of fine to further Simple Imprisonment of 3 months; Life Imprisonment for offence under Section 304B of the IPC; Simple Imprisonment for 3 years and fine of Rs.5,000/- for offence under Section 406 of the IPC and in default of payment of fine, further

- F simple imprisonment of 2 months; Simple Imprisonment for 5 years and fine of Rs.15,000/- under Section 3 of the Dowry Prohibition Act and in default of payment of fine, further Simple Imprisonment of 3 months and Simple Imprisonment of one year and fine of Rs.5,000/- under Section 4 of the Dowry Prohibition Act and, in default of payment of fine, further Simple Imprisonment of 3 months. All the sentences were to run

- G concurrently.

4. Being aggrieved by the conviction and sentence, the Respondent No.2 filed an appeal in the High Court which was numbered Criminal Appeal No.9514 of 2018. After filing the appeal, the Respondent No.2 filed Criminal Misc. Application No.129789 of 2018 *inter alia* praying

- H that he be enlarged on bail, during the pendency of the aforesaid appeal.

The said application has been allowed by the order dated 21.1.2019 A under appeal.

5. The High Court recorded the submission made on behalf of the Respondent No.2 that (i) No FIR in relation to demand for dowry or harassment had been filed before the death of the victim; (ii) the Respondent No.2 had taken Rs. 2,50,000/- as loan from the brother of the victim and not as dowry, which was established because the brother of the victim had not been produced as a witness; and (iii) that the deceased had committed suicide which was evident from the post mortem report. The cause of death as shown in the post mortem report was “asphyxia as a result of ante mortem hanging”. B C

6. The High Court briefly recorded the submission on behalf of the State and on behalf of the Appellant and then the submission on behalf of the Respondent No.2, in rebuttal, that the Respondent No.2 had been framed.

7. After recording the submissions of the respective parties, the High Court passed a short, cryptic, non speaking order, under appeal before this Court, which is set out hereinbelow for convenience:- D

“After hearing learned counsel for the parties and going through the record, we find force in the arguments raised by learned counsel for the accused-appellant. Keeping in view the facts and circumstances of the case, without commenting anything on merits of the case, we are of the considered opinion that accused-appellant is entitled to be released on bail.” E

Let accused-appellant, namely Sandeep Singh Hora convicted in aforesaid Sessions Trial No. 1385 of 2010 be enlarged on bail during pendency of appeal subject to his furnishing a personal bond and two sureties each in the like amount to the satisfaction of court concerned.” F

It is clarified that no stay order has been passed in respect of fine imposed on the accused appellant and the same shall be deposited within four weeks from today and in default, the accused-appellant shall be deprived from the benefit of the bail order passed today.” G

The bail bonds after being accepted, shall be transmitted to this Court for being kept on record of this appeal.” H

- A 8. It is not in dispute that the victim died in circumstances which were not natural, on the night of 24/25.8.2010, within about 8½ months of her marriage with the Respondent No.2 on 12.12.2009.
- B 9. On 25.8.2010, at about 3.05 a.m., a First Information Report No.352/2010 was registered on the complaint of the Appellant, pursuant to which, a criminal case being Crime No.480 of 2010 was initiated against Respondent No.2, his parents and his sister Sonia @ Disha Chhugani under Sections 498A, 304B, 406 and 411 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act.
- C 10. After investigation into the case, the Investigating Officer submitted a chargesheet against the Respondent No.2, his father Balvir Singh, his mother Manjeet Kaur and his sister Sonia @ Disha Chhugani.
- D 11. The case was committed to the Sessions Court, after which charges were framed against the accused under Sections 498A, 304B and 406 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, to which the accused pleaded not guilty and claimed trial. The accused were absolved of the charge under Section 411 of the IPC.
- E 12. In Sessions Trial No.1385 of 2010, the Prosecution examined eight witnesses, including the Appellant, being the complainant in the FIR, his wife, being the mother of the victim and his sister Rajendra Pal Kaur, being the paternal aunt of the victim. The defence also examined five witnesses. The Respondent No.2 and the other accused were examined under Section 313 of the Criminal Procedure Code (CrPC).
- F 13. The evidence adduced before the Sessions Court, has meticulously been recorded in the judgment and order dated 23.7.2018, under appeal before the High Court. The family members of the victim, who deposed before the Sessions Court, have given oral evidence that the Appellant had spent money beyond his financial capacity, for the wedding of his daughter, that is, the victim. However, soon after the marriage of the victim to the Respondent No.2 on 12.12.2009, the victim's in-laws as well as the Respondent No.2, her husband, harassed her mentally and physically for more dowry.
- G 14. From the oral evidence of the victim's parents, and other family members, it transpires that the victim used to make phone calls to her mother, maternal grandmother and her aunt, complaining of harassment meted out to her by the members of her matrimonial family. There is
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oral evidence that the Appellant's wife used to console her by saying A
that things would settle down in due course.

15. From the oral evidence it also transpires that the in-laws of B
the victim used to pressurize the victim to bring cash from her parents.
On 17.6.2010, the Respondent No.2 along with his father Balvir Singh
came to Sitapur and took cash of Rs.2,50,000/- from the victim's brother,
Pritam Singh. From the oral evidence of the Appellant, it transpires that
on the evening of 24.8.2010, the victim rang up the Appellant twice,
complaining of atrocities. She was frightened and expressed fear for
her life. On the same night at 12.15 a.m. the Appellant was informed
that his daughter had died. C

16. The 2nd Prosecution Witness, being the mother of the victim, D
stated that the family had spent approximately Rs.21 lacs for the marriage
of the victim. They had gifted I-10 car, which they had purchased, after
obtaining loan against insurance policy. However, after marriage, the in-
laws of the victim started harassing the victim, demanding cash of Rs.15
to 20 lacs, alleged to have been promised by her parents and also
demanding a Pajero car in place of the I-10 car.

17. The post mortem report reveals the following ante-mortem E
injuries:-

*"Oblique ligature mark 30 cm x 1.5 cm on front and around F
the neck just above thyroid cartilage; both lungs and
membranes congested; right heart chamber full and left empty;
there was some semi-digested food material available in
stomach; liver, spleen, both kidneys congested; uterus empty
and normal; the death had possibly taken place half day
before post-mortem. As per the opinion of the witness, the
deceased had died due to asphyxia as a result of ante mortem
hanging."*

18. The Respondent No. 2 and his parents were examined under G
Section 313 of the Cr.PC. They denied practically everything, except
the fact that the Respondent No.2 had married the victim on 12.12.2009.
They emphasized on the fact that the victim had committed suicide, and
contended that the entire investigation had been conducted under the
supervision and instructions of a motivated IPS officer, who was a friend
of the Appellant.

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- A 19. The Respondent No.2 and/or his parents have, in their examination under Section 313 of the CrPC, suggested that the deceased victim had wanted to marry some other boy, but had been compelled by her parents to marry the Respondent No.2 and that she frequently used to talk with and exchange messages with that boy. There is also a suggestion that the victim had committed suicide because of mental illness.
- B Significantly, on the one hand it is insinuated that her involvement with another boy led to the suicide and on the other hand it is suggested that she committed suicide due to mental illness. The suggestions are somewhat contradictory and in any case the suggestion of mental illness is unsupported by any evidence whatsoever.
- C 20. Through three of the witnesses examined by the defence, namely, one Shri K.K. Pandey, Sub-Divisional Engineer, Mobile Services (Security) who deposed as the 1st Defence Witness, Shri Madhu Balusu, Nodal Officer, Reliance Communications, Gomti Nagar, Lucknow who deposed as 2nd Defence Witness, and Shri Prashant Mishra who deposed as 3rd Defence Witness, the defence made an attempt to establish the victim's involvement with the said Prashant Mishra. The evidence of the aforesaid three witnesses evinces calls from the victim's phone to the phone in the name of Prashant Mishra, and from the said phone to the phone of the victim and also exchange of some messages between the two phones. However, the said Prashant Mishra, who deposed as Defence witness said, that the phone in his name was always kept at home and used by his parents and sister. The victim was a class friend of his sister, Prachi. He did not know the mobile number of the victim. The victim used to talk to his sister Prachi. This witness deposed that he knew that the victim had married the Respondent No.2. He said that his sister Prachi and his mother had attended the wedding. This witness categorically asserted that phone calls to and from the victim from this phone number were not made in his presence, nor were the messages exchanged in his presence.
- G 21. The 4th Defence Witness, Smt. Lajwanti Chugani (mother-in-law of Sonia @ Disha Chhugani) and the 5th Defence Witness Shri Bhagwan Das Chugani (father-in-law of Sonia alias Disha Chhugani) deposed that their daughter in law Sonia did not have good relations with her parents as she had left her first husband and remarried their son against the wishes of her parents.
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22. The Sessions Court considered the evidence adduced on behalf of the Prosecution, including the oral evidence of the family members of the victim, the evidence of the defence witnesses and the defence of the Respondent No.2, his parents and his sister under Section 313 of the CrPC and thereafter convicted the Respondent No.2 as also his parents Balvir Singh and Manjeet Kaur under Sections 498A, 304B and 406 of the IPC and under Sections 3 and 4 of the Dowry Prohibition Act. The Respondent No.2's sister Sonia @ Disha Chugani was acquitted of all the charges against her.

23. The judgment and order of the Sessions Court, under appeal in the High Court is based on evidence. The oral evidence adduced before the Sessions Court, which has meticulously been recorded in the judgment and order dated 23.7.2008, under appeal before the High Court, reveals that there is evidence of torture and harassment of the victim, by the Respondent No. 2 and his parents, for more dowry, soon after marriage, which continued till her death. The victim's husband (Respondent No. 2) and her in laws pressurized the victim to bring cash from her parents and also pressurized her for a Pajero car in place of the I-10 car gifted by her parents at the time of marriage. The Respondent No. 2 came to Sitapur along with his father, Balvir Singh on 17.6.2010 and took cash of Rs.2,50,000/- from the victim's brother, Pritam Singh. Even as late as on the evening of 24.8.2010, the Respondent No.2 went to the residence of the victim's aunt and threatened to put an end to the marriage. On 24.8.2010, the victim had made frantic calls complaining of torture, and expressing fear for her life. From the oral evidence, it may be reasonably inferred that she was traumatized. The same night, she died in unnatural circumstances.

24. It is not for this Court to go into the merits of the appeal pending before the High Court. Suffice it to mention that *prima facie* the Sessions Court has proceeded on the basis of evidence and the Respondent No.2 has not been able to make out a case of any patent infirmity and/or illegality in the judgment and order of the Sessions Court.

25. The Short question that arises for consideration in this appeal is, whether the High Court was justified in directing release of the Respondent No.2 on bail, during the pendency of his appeal before the High Court.

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- A 26. Section 389 provides that, pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against, be suspended and, also, if he is in confinement, that he be released on bail. Of course, in view of the mandate of Section 389(3) of the CrPC,
- B the principles are different in the case of sentence not exceeding three years and/or in the case of bailable offences. In this case, of course, none of the offences for which the Respondent No. 2 has been convicted are bailable. Moreover the Respondent No.2 has, *inter alia*, been given life imprisonment for offence under Section 304B of the IPC and imprisonment for five years for offence under Section 3 of the Dowry Prohibition Act.

27. As the discretion under Section 389(1) is to be exercised judicially, the Appellate Court is obliged to consider whether any cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and whether there is likelihood of unreasonable delay in disposal of the appeal, as held by this Court in *Kashmira Singh v. State of Punjab*¹ and *Babu Singh and Ors. v. State of U.P.*²
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28. Section 304B was incorporated in the Indian Penal Code by the Dowry Prohibition (Amendment) Act, 1986 (Act 43 of 1986). The object of the amendment was to curb dowry death. Section 304B does not categorize death, it covers every kind of death that occurs otherwise than in normal circumstances. Where the other ingredients of Section 304B of the Code are satisfied, the deeming fiction of Section 304B would be attracted and the husband or the relatives shall be deemed to have caused the death of the bride.
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- F 29. The essential ingredients for attraction of Section 304B are:
 - (i) the death of woman must have been caused in unnatural circumstances.
 - (ii) the death should have occurred within 7 years of marriage

- G (iii) Soon before her death the woman must have been subjected to cruelty or harassment by her husband or his relatives and such cruelty or harassment must be for or in connection with the demand for dowry, and such cruelty or harassment is shown to have been meted out to the woman soon before her death.

H ¹ (1977) 4 SCC 291
 ² (1978) 1 SCC 579

30. As observed by this Court in *State of Punjab v. Iqbal Singh & Ors.*³, the legislative intent of incorporating Section 304B was to curb the menace of dowry death with a firm hand. In dealing with cases under Section 304B, this legislative intent has to be kept in mind. Once there is material to show that the victim was subjected to cruelty or harassment before death, there is a presumption of dowry death and the onus is on the accused in-laws to show otherwise. At the cost of repetition, it is reiterated that the death in this case took place within 8½ months of marriage. There is apparently evidence of harassment of the victim for dowry even on the day of her death, and there is also evidence of payment of a sum of Rs.2,50,000/- to the Respondent-Accused by the victim's brother, two months before her death.

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31. In *Kalyan Chandra Sarkar v. Rajesh Ranjan and Anr.*⁴, this Court held:-

"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 merits 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."

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32. Even though detailed examination of the merits of the case may not be required by courts while considering an application for bail but, at the same time, exercise of jurisdiction has to be based on well settled principles and in a judicious manner and not as a matter of course as held by this Court in *Chaman Lal v. State of U.P. and Anr.*⁵.

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33. In *Mauji Ram v. State of Uttar Pradesh and Anr.*⁶, this Court referred to *Ajay Kumar Sharma v. State of U.P. and Ors.*⁷, *Lokesh Singh v. State of U.P. and Anr.*⁸ and *Dataram Singh v. State*

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³ (1991) 3 SCC 1

⁴ (2004) 7 SCC 528

⁵ (2004) 7 SCC 525

⁶ (2019) 8 SCC 17

⁷ (2005) 7 SCC 507

⁸ (2008) 16 SCC 753

- A *of U.P. and Anr.*⁹ and stated categorically that this Court had time and again emphasised the need for assigning reasons while granting bail.

34. In *Lokesh Singh v. State of U.P. and Anr.* (supra), this Court referred to *Kalyan Chandra Sarkar v. Rajesh Ranjan* (supra) and set aside the impugned order of the High Court granting bail.

- B 35. In *Ajay Kumar Sharma* (supra), a three-Judge Bench of this Court relied on *Chaman Lal v. State of U.P.* (supra) and set aside order of bail granted by the High Court holding, that it was well settled that even though detailed examination of the merits of the case may not be required by the courts while considering an application for bail, at the same time exercise of discretion has to be based on well settled principles and in a judicious manner and not as a matter of course.

36. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post conviction. In the earlier

- D case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in *Dataram Singh v. State of U.P. and Anr.* (supra). However, in case of post conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the *prima facie* merits of the appeal, coupled with other factors. There F should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C.

- G 37. In *Vinod Singh Negi v. State of Uttar Pradesh and Anr.*¹⁰, this Court set aside the impugned order of suspension of sentence and grant of appeal as the order was devoid of reasons.

38. It is nobody's case that the death of the victim was accidental or natural. There is evidence of demand of dowry, which the Trial Court

H ⁹(2018) 3 SCC 22

¹⁰(2019) 8 SCC 13

has considered. The death took place within 7 or 8 months and there is oral evidence of the parents of cruelty and torture immediately preceding the death. There is also evidence of payment of Rs.2,50,000/- to the Respondent-Accused by the victim's brother. The Respondent No.2 has not been able to demonstrate any apparent and/or obvious illegality or error in the judgment of the Sessions Court, to call for suspension of execution of the sentence.

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39. In considering an application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction *prima facie* erroneous. Where there is evidence that has been considered by the Trial Court, it is not open to a Court considering application under Section 389 to re-assess and/or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail.

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40. Even though the term 'dowry' is not defined in the Indian Penal Code, it is defined in the Dowry Prohibition Act, 1961 as any valuable security given or agreed to be given either directly or indirectly by one party to the marriage to the other party to the marriage, or by any person at or before or any time after the marriage, in connection with the marriage of the parties.

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41. It is difficult to appreciate how the High Court could casually have suspended the execution of the sentence and granted bail to the Respondent No.2 without recording any reasons, with the casual observation of force in the argument made on behalf of the Appellant before the High Court, that is, the Respondent No.2 herein. In effect, at the stage of an application under Section 389 of the CrPC, the High Court found merit in the submission that the brother of the victim not having been examined, the contention of the Respondent No.2, being the Appellant before the High Court, that the amount of Rs.2,50,000/- was taken as a loan was not refuted, ignoring the evidence relied upon by the Sessions Court, including the oral evidence of the victim's parents.

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42. From the evidence of the Prosecution witnesses, it transpires that the Appellant had spent money beyond his financial capacity, at the wedding of the victim and had even gifted an I-10 car. The hapless parents were hoping against hope that there would be an amicable settlement. Even as late as on 17.6.2010 the brother of the victim paid

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- A Rs.2,50,000/- to the Respondent No.2. The failure to lodge an FIR complaining of dowry and harassment before the death of the victim, is in our considered view, inconsequential. The parents and other family members of the victim obviously would not want to precipitate a complete break down of the marriage by lodging an FIR against the Respondent No.2 and his parents, while the victim was alive.
- B 43. For the reasons discussed above, the appeal is allowed. The impugned order of the High Court is set aside and the Respondent No.2 is directed to surrender for being taken into custody. The bail bonds shall stand cancelled.

Kalpana K. Tripathy

Appeal allowed.