

Mukesh Kumar vs Union Territory Of J&K on 14 March, 2022

Sr. No.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Bail App No. 264/2021
CrIM Nos. 2373 & 1564/2021

Reserved on: 10.03.2022
Pronounced on: 14.03.2022

Mukesh Kumar

.....Petitioner(s)

Through :- Mr. Vaibhav Gupta, Advocate

v/s

Union Territory of J&K

.....Respondent(s)

Through :- Mr. Ravinder Gupta, AAG

CORAM: HON'BLE MR. JUSTICE M.A. CHOWDHARY, JUDGE

ORDER

14.03.2022

1. Petitioner through the medium of this petition under section 439 of the Code of Criminal Procedure has invoked the jurisdiction of this Court seeking grant of bail, who is facing criminal trial before the Court of learned Principal Sessions Judge, Samba in criminal challan titled UT of J&K vs Mukesh Kumar, arising out of FIR No. 15/2021, registered at Police Station, Ramgarh, Samba under Section 306 IPC.

2. It has been alleged that the petitioner was married to Jyoti Devi D/O Chajju Ram, R/O Patti, Tehsil Vijaypur District Samba in November, 2011 and out of the said wedlock three children were born but unfortunately two of their sons could not survive; the petitioner was serving as N.O in the Medical Department on ad-hoc basis and was posted at Govt. Accidental Hospital, Vijaypur; that his wife expired on 09.08.2020 and family members of the deceased alleged that their daughter had committed suicide by hanging herself due to harassment and a case came to be registered at the instance of her parents, vide FIR No. 15/2021 on 12.03.2021, at Police Station, Ramgarh, Samba under Section 306 IPC and petitioner was arrested. After investigation charge sheet has been filed against petitioner in the Court of learned Principal Sessions Judge, Samba; that the death of two

sons had led the deceased to go into depression and she took the extreme step of committing suicide, therefore, there was no occasion for him to instigate or abet his wife to commit suicide. It has been further alleged that the petitioner has been wrongly and falsely implicated in the case, notwithstanding that the petitioner had neither committed any offence nor participated in the commission of any crime.

3. Petitioner moved an application for grant of bail in the Court of learned Principal Sessions Judge, Samba, which however, was rejected on 20.07.2021.

4. The respondent filed objections to this petition asserting therein that the bail application is not maintainable as the offence is very heinous in nature and also there has been no change of circumstances and it was prayed that the bail application of the petitioner be rejected.

5. Heard learned counsel for both the sides and have also perused the record.

6. Learned counsel for the petitioner argued that the petitioner has not committed any offence. Neither he participated in the commission of any offence nor has he indulged in any activity which can be termed as criminal. It has been further argued that the learned Trial Court failed to appreciate that the fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty and bail is the general rule and putting a person in jail or in a prison is an exception.

7. Mr. Ravinder Gupta, learned AAG, ex adverso, argued that the Hon'ble Apex Court has underlined the guidelines for criminal courts of the country and laid down principles to be taken into consideration at the time of grant of bail. These principles have been embodied in the cases of Kalyan Chandra Sarkar Vs Rajesh Rajan alias Papu Yadav & Anr., reported in (2004) 7 SCC 528, State vs Captain Jagjit Singh, reported in AIR 1962 SC 253, Gurcharan Singh vs State Delhi Administration, reported in AIR 1978 SC 179 and all these guidelines have distilled in a judgment of Hon'ble the Supreme Court in Jayendra Saraswati Swamigal vs State of Tamil Nadu, reported in AIR 2005 SC 716 and basically they are the nature and seriousness of the offences, character of evidence, circumstances which are peculiar to the accused, reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of the evidence being tampered, with the above all, larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of each case. It was argued that the allegations against the petitioner are serious; any concession of bail in favour of the petitioner would not be in the interest of the society at large. The evidence is yet to start and there is reasonable apprehension of tampering of witnesses or apprehension of threat to complainant and this aspect of the matter is very vital for grant or refusal of bail. The present bail application is, thus, liable to be rejected.

8. Hon'ble the Supreme Court in the cases titled Shabbir Hussain vs The State of Madhya Pradesh & Ors., reported in 2021 SCC Online SC 743, Velladurai vs State represented by the Inspector of Police, reported in 2021 SCC Online SC 715 and K.V. Prakash Babu vs State of Karnataka, reported in (2017) 11 SCC 176, has held that in order to bring a case within the provisions of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to

have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of offence. Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC. Abetment by a person is when a person instigates another or do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide.

9. Shorn of minute details, prosecution case is that petitioner entered into wedlock with one Jyoti Devi in the year 2011; that a baby girl was also born out of their wedlock; that after some years of the marriage, petitioner used to beat his wife with criminal intention and due to this harassment, Jyoti Devi committed suicide by hanging herself at their residence. During inquest proceedings U/S 175 CrPC, it was found that she committed suicide having been abetted by the petitioner. Based on it a case was registered at Police Station Ramgarh, vide FIR No. 1/2021 U/S 306 IPC. After investigation of the case, chargesheet against petitioner was laid in the Court for the commission of the aforementioned offence, as it was proved that the petitioner had been subjecting his wife to cruelty for the reason that he had been having extra marital relations to which she had objected.

10. Petitioner had been arrested on 12.03.2021 and since then he is in custody. He had moved an application for bail before Trial Court at Samba which was rejected vide order dated 20.07.2021, mainly for the reasons that accused was yet to be charge sheeted and that there were apprehensions that the accused if granted bail, shall tamper with the prosecution evidence. Offence of commission of abetting suicide is punishable U/S 306 IPC with imprisonment of 10 years.

11. Petitioner is stated to have been charge-sheeted U/S 306 IPC vide order dated 21.12.2021. Mere extra marital relations are alleged to be the acts of the petitioner to have driven/instigated his deceased wife to end her life by hanging herself at her residence. Marriage between them was solemnized in the year 2011. The presumption of abetment within the seven years of marriage is not applicable to the facts and circumstances of the case. On perusal of Section 306 IPC, facts and circumstances of the case and the law laid down by Hon'ble the Supreme Court in the aforementioned cases and having regard to the liberty as enshrined in Article 21 of the Constitution of India, the petitioner is found entitled for grant of bail in the case.

12. Having regard to the aforesaid discussion, the petitioner is ordered to be released on bail subject to following conditions:-

- i) That he shall furnish bail and personal bonds to the tune of Rs. 50,000/- to the satisfaction of the Trial Court.
- ii) That he shall not tamper with the prosecution evidence, in any manner, whatsoever.
- iii) That he shall not leave the territorial jurisdiction of this Court without the prior permission of the Trial Court.

13. Petition granted. Pending applications are also disposed of.

(M.A. Chowdhary) Judge JAMMU 14.03.2022 Vijay Whether the order is speaking: Yes Whether the order is reportable: Yes