

# Mohd. Abdullah Malik & Ors vs Ut Of J & K on 29 October, 2022

**Author: Mohan Lal**

**Bench: Mohan Lal**

Sr.No. 132

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU

Bail App No. 28/2022  
CrIM No. 1698/2022

Reserved on : 21.10.2022  
Pronounced on : 29.10.2022

Mohd. Abdullah Malik & Ors.

....Applicant(s)

Through :- Mr. Sheikh Altaf Hussain, Advocate

V/s

UT of J & K

....Respondent(s)

Through :- Mr. Suraj Singh, GA  
Coram: HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

ORDER

29.10.2022

1. Applicants/accused in terms of section 439 of the Code of Criminal Procedure have sought the indulgence of this court for their enlargement on bail in case FIR No. 55/2021 for commission of offence punishable u/s 306 of IPC of Police Station Mahore. It is averred, that applicants/accused are the law abiding and peace loving citizens of India and have never committed any offence so far, therefore, fully entitled to the protection of their fundamental rights including the right of freedom and liberty; that on 23.06.2019 the dead body of Farooq Ahmed was found hanging with a tree at Hariwala Thuroo, accordingly, the inquest proceedings u/s 174 CrPC were initiated vide DDR No. 21 dated 23.06.2019 and subsequently on 13.07.2021 the FIR No. 55/2021 u/s 306 IPC was registered in the matter which culminated into the production of challan against the applicants/accused before the Court of learned Principal Sessions Judge, Reasi. The applicants/accused have been arrested in the said FIR on 16.09.2021 but till date the prosecution has failed to make out a case for framing of charge; that the deceased was serving as Teacher in the Department of School Education, his family was putting separately from the parental abode. After the death of deceased, the complainant party wanted to claim the monetary benefits and grab the land of deceased, which was objected by the

applicants/accused, as a result of which they were book in the FIR after more than two years of alleged occurrence; that applicant No.1 & 2 are old aged withered persons who are suffering from number of ailments, they are the grand father-in-law and mother-in-law of the deceased and applicants Nos. 3 and 4 are the mother-in-law and father- in-law of deceased. All the applicants are putting up in Village Dansal Tehsil Arnas, whereas deceased was putting up at Morha Hariwala in Village Lencha, Tehsil Thuroo, even the applicants 1&2 are putting up separately from applicant Nos. 3 & 4; that the marriage of applicant No.5 was contracted with the deceased in the year 2014, out of their wedlock three kids/children have been born; that the matrimonial relation of deceased with applicant No.5 always remained cordial; that there was a property dispute between the deceased and his elder brother Ghulam Ali. It is only because of this dispute the deceased committed suicide, even after his death, his parental family wanted to grab the share of the deceased in the land. In this regard the applicant No.5 filed an application before SSP on 06.03.2021 and after investigation the applicant No.5 was forced to leave the share of deceased at Dar Mohallah, Hariwala in favour of her brother-in-law namely Ghulam Ali. The applicant No.5 is claiming back the said land but the parental family of deceased is hell bent to grab the same; that on 29.10.2021 applicants filed application for grant of bail before the trial Court, but the same has been dismissed vide order dated 30.12.2021 on the ground that the allegations leveled against the applicants are serious in nature and in case the applicants/accused are released on bail they will hamper the trial. Prayer has been made for enlargement of applicants/accused on bail.

2. Respondents have opposed the bail on the grounds, that the allegations against applicants/accused are serious, therefore, concession of bail in their favour would not be in the interest of society at large; it is settled law, that bail may be refused if there is likelihood of the accused tempering with the witnesses for prosecution or otherwise polluting the process of justice; that since the accused persons are involved in heinous offence and keeping in view the seriousness of the offence for which they have been charged, they do not deserve the concession of bail at this stage and if bail is granted to the accused persons it will send wrong message to the society; as per the prosecution case it is stated that on 23.06.2019 one person namely Farooq Ahmed (Teacher) S/o Abdul Ghani caste Dar R/o Hari Walla Tehsil Thuroo hanging himself with a tree nearby his house and died on spot, the cause of death is not ascertained, death of deceased person is occurred in suspicious circumstances, on this an inquest proceeding u/s 174 CrPC initiated vide DDR No. 21 dated 23.06.2019 of Police Post Shajroo, enquiry officer visited the spot prepared site plan and took the dead body in his possession and conducted post mortem from CHC Mahore; a suicide note was seized from the pocket of deceased and also seized a registered written by the said deceased person in his own hand writing and recorded the statements of witnesses u/s 175 Cr.P.C; as per enquiry, it is found that the above said deceased person committed suicide by the abetment of six persons namely (1) Shabeena Banoo @ Shabnam w/o deceased person, (2) Mohd Iqbal S/o Abdul Samad, (3) Mohd. Rafiq s/o Abdullah, (4) Abdulla Malik s/o Mohd. Isamil, (5) Saleema Begum w/o Mohd Rafiq and (6) Khatija Bano w/o Abdulla all resident of Dhansal Tehsil Arnas. On this enquiry case FIR No. 55/2021 for the offence under Section 306 IPC has been registered at Police Station Mahore. Prayer has been made for rejection of the bail.

3. Ld. Counsel for applicants/accused has vehemently sought release of applicants/accused on bail by projecting arguments, that for the last more than 1 year accused are languishing Jail in District

Jail Udhampur, "bail is a rule" and "refusal is an exception", personal liberty of accused is of paramount importance as they are presumed to be innocent till guilt is proved against them, keeping of applicants/accused in incarceration in the jail would amount to inflicting pre-trial punishment which is against the basic principle of criminal jurisprudence. It is argued, that applicants are putting up in Village Dansal Tehsil Arnas, whereas deceased was putting up at Morha Hariwala in Village Lencha, Tehsil Thuroo, even the applicants 1&2 are putting up separately from applicant Nos. 3 & 4. It is moreso argued, that petitioner has deep roots in the society and therefore does not possess golden wings to flee from justice.

4. Ld. GA has strenuously opposed the bail by articulating arguments, that offence indicted against the accused is serious & heinous punishable with maximum imprisonment upto life which is against the society at large as the applicants/accused in connivance with each other abetted the deceased Farooq Ahmed to take extreme step of suicide. It is argued, that there is every likelihood of accused fleeing from justice if enlarged on bail, and moreso, there is every possibility that the accused on bail will influence the prosecution witnesses and spoil the case of prosecution.

5. Heard Ld. Counsel for the accused and Ld. GA for respondents. I have perused the record carefully. The principles which generally govern the grant of bail are relatable to, (i) Seriousness of allegations, severity of punishment, the character of evidence on which the charges is supposed to be sustained, tempering and intimidating of witnesses and chances of running away from the trial, (ii) False implication of the accused, allegations leveled not believable and the wrecking vengeance for political or business reasons. It is also to be noted that at the stage of granting bail, the court can only go into question as to whether a prima-facie case is established against the accused and cannot go into the evidentiary value, creditability and reliability of the witnesses. In light of the principles laid down above, the plea projected by the ld. Counsel for the accused in the bail application is required to be examined generally. Applicants/accused are indicted for commission of offence U/S 306 IPC of Police Station Mahore, charge-sheet against accused persons have been framed and the trial is at the stage of prosecution evidence.

In a case reported in 2010 (3) JKL 129 (HC) (Jagdish Kumar & Ors Versus State & Ors), Hon'ble Mr. Justice Sunil Hali (His Lordships the then was Hon'ble Judge of the High Court) while granting bail to the accused charged for commission of offence u/s306/498-A RPC, and while discussing the principles of "prima-facie case", "question of influencing the prosecution witnesses"& "approach of the court in granting bail in non-bailable offences", in paras 17, 18 & 19 of the judgment held as under:-

"17.While applying the aforementioned principles, it is necessary for the court to examine the nature and gravity of the circumstances under which the offence is committed. Existence of a prima-facie case is essential. If there is no prima-facie case, there is no question of considering other circumstances. Even where a prima-facie case is established, the approach of the court in the matter of bail, is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tempering with the evidence.

18. The circumstances which have been brought into focus by the respondents as also by the learned sessions Judge, Samba are that the accused persons tried to influence the investigation at the initial stage. The post mortem was got conducted by the Board only through the intervention of the Dy. Commissioner. Nothing has been revealed nor any material has been shown by the prosecution or by the learned Principal Sessions Judge to substantiate this plea. It is mere bald assertion, which cannot be accepted unless there is some material to that extent.

19. Regarding the question of influencing the witnesses, it be seen that material witnesses are parents and brothers of the deceased, which cannot be influenced. Mere allegation that accused persons are influential is not sufficient unless there is some material to that extent.

Ratio of the judgment (Supra) makes the legal position abundantly clear, that even if prima-facie case is established, the approach of the court in granting bail should be that the accused should not be detained by way of punishment, and regarding influencing of witnesses, the material witnesses viz; prosecutrix and her parents cannot be expected to be won over by the accused. In another case law reported in 2016(2)J.K.J 702, J&K High Court, [Arjun Katal and Ors. versus State of J&K & Ors.] Hon'ble J&K High Court while granting bail to accused for offences u/ss 498A, 304B & 306 RPC & while observing that refusal of bail would amount to punishing the petitioner without trial, in Head Note "B" & paras 17, 25 & 26 of the judgment held as under:-

B. Criminal Procedure Code, Svt., 1989, Section 487C-Ranbir Indian Penal Code, Svt., 1989, Section 498A, 304B and 306- Dowry death-Grant of bail-Entire evidence implicating whole family cropped up after incident-No indication of earlier ever domestic violence or incident of harassment, violence relating to demand of dowry by petitioners- Bar under proviso of Section 497C not attracted- Petitioner husband and mother-in-law in custody for more than one year-Refusing bail nothing but punishing petitioners for alleged involvement in death of deceased -Bail allowed.

17. In the case on hand, it has been noticed that the marriage of the couple had taken place more than two years prior to the unfortunate incident. The marriage had procreated a male child.

There seems substance in the argument of learned counsel for the petitioners that entire evidence implicating the whole family including parents-in-law and brother-in-law of the deceased, besides the husband, cropped up after the incident and that the material collected by the I.O. does not indicate that earlier ever there had been any report of any domestic violence or an incident of harassment and violence relating to demand of dowry by the petitioners and also that the I.O. did not even investigate whether the brother-in-law was also present in the house during those days or not.

25. Experience would show that whenever a woman dies an unnatural death shortly after her marriage or within seven years of the marriage, her parents feel that her husband and in-laws are responsible for such death. That feeling of the parents of the deceased itself becomes a sufficient round for booking the husband and the parents and quite often siblings and other relatives of the husband. Whether they were responsible for the death of the deceased or not can be ascertained only after investigation and verified after trial but they are arrested in any case. The important question relating to their liberty, thus, arises for consideration of the bail/trial court.

26. As said above, petitioners had been and presently two of them, that is mother-in-law and husband of the deceased are in custody for last more than one year. Charges against them have been framed by the trial court on 07.09.2015. Minutes recorded in the trial court file would show that but for one witness whose statement has been recorded on 22.12.2015, prosecution has not produced any other witnesses or even parents of the deceased during three or four calendars fixed by the court. The accusations do not merit refusal of bail to the mother-in-law and the brother-in-law of the deceased at this stage after more than a year of their arrest. All the material witnesses are family members of the parents of the deceased inasmuch as no apprehension of the petitioners' tampering with the evidence or jumping over the bail has been expressed by the State nor can be visualized. Refusing bail to them at this stage would be nothing but punishing them for their alleged involvement in the death of the deceased which is not permissible under law.

Ratio of judgment (Supra) also makes the legal proposition abundantly clear, that refusing bail is nothing but punishing the accused, whether the accused is responsible for the death of the deceased has to be verified during trial and material witnesses viz; family members of deceased cannot be win over.

Ratios of the judgments of "Jagdish Kumar's Case" & "Arjun Katal's Case", (Supra) make it manifestly clear, that the approach of the court in matter of bail should not be that accused should be detained by way of punishment but whether his/her presence would be readily available for trial & material witnesses viz; family members of the deceased cannot be win over. Applying the ratios of judgments (Supra) to the facts of the case in hand, it is apt to mention here, that the charges have been framed against accused and the case is at the stage of prosecution evidence. All the applicants are putting up in Village Dansal Tehsil Arnas, whereas deceased was putting up at Morha Hariwala in Village Lencha, Tehsil Thuroo, even the applicants 1&2, who are suffering from number of ailments, are putting up separately from applicant Nos. 3 & 4, and since their arrest on 16.09.2021 they are lying in detention in District Jail Udhampur for the last more than 1 year. Applicants/accused have deep roots in the society and their presence can be secured by directing them to furnish sufficient securities. As per the ratios of the judgments (Supra), the legal position is no longer res-integra that "every accused is presumed to be innocent till his/her guilt is proved", "approach of the court in matter of bail should not be that accused should be detained by way of punishment but whether his/her presence would be readily available for trial" & "material witnesses viz; family members of the deceased cannot be win over". The powers to grant bail has to be considered in the backdrop of constitutional guarantees contained in Article 21 of Constitution of India which guarantees right to liberty of an individual (Vide Jagir Singh Vs. Jagjit Singh & anr. reported in 2012 (2) J.K.J. 231 (HC)). Every accused has a right to defend his case and by keeping the

accused in detention, it would defeat his right to defend his case. Applicants/accused in the case in hand cannot be kept in incarceration for a sufficient indefinite long time as a matter of punishment. The offence indicted against applicants/accused does not carry a punishment of death penalty or life imprisonment, but alternative punishment either description for a term which may extend to ten years. The apprehension of the prosecution that applicants/accused will abscond can be secured by way of sufficient sureties from them. Keeping of accused in continuous detention would amount to infringement of their fundamental right of personal life and liberty and inflicting pre- trial punishment. In view of the aforesaid discussion, at this stage, applicants/accused have carved out a strong case for bail in their favour. Applicants/accused are, therefore, admitted to bail in the sum of Rs.1,00,000/- (Rs.One lac only) each before Registrar Judicial of this Court with the direction to furnish personal recognizance of the like amount before Superintendent District Jail Udhampur. However, before parting, the following conditions are imposed upon the accused:-

- i) that the applicants/accused shall not influence the prosecution witnesses or intimidate them or dissuade them from deposing before this court;
- ii) that the applicants/accused shall appear before the trial court on each and every date of hearing except for special circumstances beyond their control in which case they shall seek exemption from the trial court;
- iii) that in case prosecution collects any material during the period the applicants/accused are on bail that they have influenced the witnesses or tried to intimidate them, the prosecution would be well within its right to move an application before this court for cancellation of their bail.

6. Disposed of accordingly along with connected applications.

(Mohan Lal) Judge Jammu:

29.10.2022 Vijay Whether the order is speaking: Yes/No Whether the order is reportable: Yes/No