

Mr. Rohim S/O Imtiyaz Kagji vs The State Of Karnataka on 29 November, 2021

Author: Shivashankar Amarannavar

Bench: Shivashankar Amarannavar

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IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 29 T H DAY OF NOVEMBER 2021
BEFORE
THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO.102113/2021

BETWEEN:

MR. ROHIM S/O. IMTIYAZ KAGJI,
AGE: 28 YEARS, OCC: PRIVATE SERVICE,
H.NO.1680, ALWAN GALLI
SHAHAPUR,
BELAGAVI.

...PETITIONER

(BY SRI VITTHAL S. TELI, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH,
AT: DHARWAD
THROUGH
SHAHAPUR POLICE STATION
BELAGAVI

... RESPONDENT

(BY SRI RAMESH B. CHIGARI, HCGP)

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THIS CRIMINAL PETITION IS FILED UNDER

SECTION 439 OF CR.P.C., SEEKING TO GRANT
REGULAR BAIL IN SHAHAPUR P.S.
CR.NO.65/2021 FOR THE OFFENCES
PUNISHABLE UNDER SECTIONS 498A, 340B,
306 READ WITH SECTION 34 OF IPC AND
SECTIONS 3 AND 4 OF THE DOWRY
PROHIBITION ACT, 1961, PENDIG ON THE FILE
OF THE JMFC-II, BELAGAVI AND PETITIONER-
ACCUSED NO.2 MAY KINDLY BE ENLARGED.

THIS CRIMINAL PETITION COMING ON FOR
ORDERS THIS DAY, THE COURT MADE THE
FOLLOWING:

ORDER

This petition is filed by accused No.1 under Section 439 of The Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.', for brevity) seeking bail in Crime No.65/2021 of Shahapur Police Station, registered for the offences punishable under Sections 498A, 304B, 306 read with Section 34 of The Indian Penal Code (hereinafter referred to as the 'IPC', for brevity) and Sections 3 and 4 of the Dowry Prohibition Act, 2012 (hereinafter referred to as the 'D.P. Act', for brevity).

2. It is the case of the prosecution that one Akeeb Mahammadgous Makanadar has filed a complaint stating that the deceased is his sister - Muskan, aged 20 years, who has been months ago and after marriage Muskan was residing with petitioner-accused No.1 in his house. It is stated in the complaint that since last three months deceased was complaining that her husband-accused No.1 and her in-laws accused Nos.2 and 3 were assaulting her and asking her to bring dowry from her parental house. It is further stated that 15 days prior to the incident uncle of complainant had given Rs.10,000/- to the accused, in spite of that accused did not stop harassing the deceased, 10 days prior to the incident deceased again complained about ill-treatment by the accused. It is further stated that on 14.09.2021 the deceased had called her uncle Zuber and informed him that her husband and his family members are asking her to commit suicide and requested him to take her back to her parental house, for that, her uncle told that he will come in the evening. It is further stated that on the same day at 7.30 p.m., complainant received a phone call from his relatives that his sister Muskan has committed suicide in the matrimonial home by hanging herself in the bedroom. The complainant with his mother and another sister and other relatives went to his sister's house and noticed that his sister - Muskan was hanging from dupatta to an iron bar in her bedroom. The said complaint came to be registered in Crime No.65/2021 by Shahapur Police Station for the offences punishable under Section 498A, 304B, 306 of IPC and Sections 3 and 4 of D.P. Act. The petitioner who came to be arrested on 15.09.2021 has filed Crl.Misc. No.1033/2021 seeking bail and the same came to be rejected by VI Additional District and Sessions Judge, Belagavi, by order dated 27.09.2021. Therefore, petitioner is before this Court seeking bail.

3. Heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader for the respondent-State.

4. Learned counsel for the petitioner would contend that the allegations made in the complaint are omnibus allegations against all the accused. He submits that petitioner met with an accident on 30.08.2021 and he undergone operation on 31.08.2021 and he has been discharged from Hospital on 03.09.2021, therefore there is no question of his demanding dowry and harassing the deceased. He would further submit that the allegations made against accused Nos.1 to 3 are similar and accused Nos.2 and 3 have been granted anticipatory by the Sessions Court, therefore petitioner-accused No.1 is also entitled for grant of bail on the ground of parity. He would further submit that there are no specific allegations against petitioner, petitioner is in judicial custody since more than 2 months, therefore he is not required for custodial interrogation. He would submit that petitioner needs further medical treatment as he has undergone operation of his mandible. With this, he prayed for allowing the petition.

5. Per contra, learned High Court Government Pleader for the respondent-State would contend that the offences alleged against the petitioners are heinous offences punishable with imprisonment for life. He would further contend that the averments made in the complaint has made it clear that accused Nos.2 and 4 were demanding dowry from parents of the deceased. On the date of incident at about 11.45 p.m., the deceased made a phone call to her uncle and said that accused are asking her to die if she does not bring dowry. He submits that since the death has taken place in the house of accused and within 7 years of marriage, there is a presumption that it is a Dowry death under Section 113(B) of Indian Evidence Act. He would further submit that the case is still under progress and if the petitioner is granted bail, he will hamper the investigation and tamper the prosecution witnesses. With this, he prayed to dismiss the petition.

6. Having regard to the submission made by the learned counsel for the petitioner and the learned High Court Government Pleader for respondent-State, this Court has gone through the FIR, Complaint and the order passed by the Sessions Court.

7. The accusation leveled against the accused persons is that the deceased Muskan who is the wife of petitioner-accused No.1 has been harassed by accused Nos.1 to 3 to bring dowry from her parents' house or otherwise to die, therefore, she committed suicide by hanging herself in the bedroom in the house of her husband. It is alleged that the petitioner and accused Nos.2 and 3 have abetted her to commit suicide. The allegations made against accused Nos.1 to 3 is omnibus allegations, there is no specific allegation against who are in-laws of the deceased have been granted anticipatory bail by the Sessions Court. The accusation made against petitioner-accused No.1 is similar to that of accused Nos.2 and 3. Therefore, petitioner- accused No.1 is entitled for grant of bail on the ground of parity. Further, the petitioner underwent surgery on 31.08.2021 to his mandible, therefore he requires follow up treatment. Whether the petitioner and other accused abetted deceased to commit suicide for demand of dowry is a matter of investigation. As the petitioner is in judicial custody since 15.09.2021 and he has undertaken to co-operate with the police during investigation, his prayer for grant of bail can be allowed. The main objection of the prosecution is that in the event of granting bail, the petitioner will hamper the investigation and tamper the prosecution witnesses. The said objection may be set right by imposing suitable conditions.

