

# **Mrs Rafiya Bi vs The State Of Karnataka Represented on 3 January, 2014**

**Author: R.B Budihal**

**Bench: R.B Budihal.**

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF JANUARY 2014

BEFORE

THE HON'BLE MR. JUSTICE BUDIHAL. R.B

CRIMINAL PETITION No.7274/2013

BETWEEN:

1. Mrs. Rafiya Bi,  
W/o. Mr. Ghouse Mohiddin,  
Aged 57 years,  
R/o. Jiddigere,  
Kunigal Taluk,  
Tumkur District-572 134.
2. Mr. Ismail  
S/o. Mr. Basha Sab @ Khasim Sab,  
Aged 41 years,  
R/o. Jiddigere,  
Kunigal Taluk,  
Tumkur District-572 134.
3. Mr. Zabiulla,  
S/o. Mr. Basha Sab @ Khasim Sab,  
Aged 41 years,  
R/o. No.44, Veerasagar, Tumkur Town,  
Tumkur Taluk,  
Tumkur District-572 101.
4. Mrs. Rizwana,  
W/o. Mr. Zabiulla,  
Aged 37 years,  
R/o. No.44, Veerasagar, Tumkur Town,  
Tumkur Taluk,  
Tumkur District-572 101.

5. Mrs. Zamrud Bee,  
W/o. Mr. Basha Sab @ Khasim Sab,  
Aged 74 years,  
R/o. No. 105, Jiddigere,  
Huliyurudurga, Kunigal Taluk,  
Tumkur District-572 134.

6. Mr. Afzal Pasha,  
S/o. Mr. Abdul Khadar,  
Aged 20 years,  
R/o. No. 456, 5th Cross,  
Bhuvaneshwari Nagar,  
R. T. Nagar Post,  
Bangalore-560 032.

.. PETITIONERS

(By Sri. , Adv.)

AND:

The State of Karnataka represented  
By the State Public Prosecutor,  
by Thumkur Police,  
High Court Building, Bangalore.

.. RESPONDENT

(By Sri. K. Nageshwarappa, HCGP)

This criminal petition is filed under Section 438 of the Cr.P.C. praying to enlarge the petitioners on bail in the event of their arrest in Crime No. 153/13 of Thila Park P.S., Tumkur, for the offences P/U/S 498A, 504, 506 of IPC and U/S 3 and 4 of D.P. Act. , etc.

This petition coming on for Orders this day, the Court made the following :

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#### ORDER

This petition is filed by the petitioners under Section 438 of Cr.P.C. seeking their release on bail of the offences punishable under Sections 506, 498-A and 504 of IPC and also under Sections 3 and 4 of Dowry Prohibition Act registered in the respondent police station Crime No.153/2013.

2. Brief facts of the case are that on 08.10.2013, Mrs. Asma Bhanu lodged a complaint alleging that she married with Accused No.1 and during her marriage, her parents have paid Rs.1,00,000/-

(Rupees one lakh only) and given 23 grams of gold ornaments. It is further alleged that for 3-4 months after the marriage, the petitioners demonstrated healthy relationship with the Complainant. But, thereafter, accused No.1 has received further dowry amount and gold ornaments for the purpose of his business. He has again collected more dowry amount to get the house for lease, to purchase the site and for business. It is further alleged that when the complainant was 3 months pregnant, accused Nos. 1 and 4 have assaulted and sent her out of the house. Later, the complainant gave birth to her second child and when the child was 5 months old, accused No.1 went to the parent's house of the complainant on 06-01-2013 and requested her mother to send her to his house at Bangalore. After taking the Complainant to his house at Bangalore, he took the gold ornaments of their children. After 6 months, Accused No. 1 sent the complainant with her children to her parent's house at Tumkur. After some time, again the accused No.1 went to the house of the parents of the Complainant and took her to his house at Bangalore by saying that he will not harass her. On the basis of the said complaint, a case was registered against the present petitioners.

3. Learned Counsel for the petitioners, during the course of the arguments, submitted that when the complainant left the matrimonial house and went to her parents place, accused No.1 lodged a complaint and a case was registered against the complainant in Hebbal police station, which was registered as non cognizable offence. The learned Counsel further made the submission that as a counter blast to that case, on the very next day, the complainant filed a complaint against accused No.1 and also other accused persons. He submitted that the petitioners have not given any sort of ill treatment to the complainant and they are innocent. He submitted that the petitioners may be released on anticipatory bail by imposing reasonable conditions.

4. As against this, learned High Court Government Pleader appearing for the respondent, during the course of the arguments, submitted that after the marriage, the parents of the complainant gave gold and cash as dowry. In spite of that, the petitioners repeatedly demanded more dowry amount harassing the complainant, both physically and mentally. He further submitted that matter is still under investigation and therefore, the petition be rejected.

5. I have perused the averments made in the bail petition, FIR, complaint and the other materials produced along with the petition. I have also perused the copy of the order passed by the First Additional District and Sessions Judge, Tumkur in CrI. Misc. No.1199/2013 dated 16.11.2013. Perusing the entire materials on record, it is no doubt true that there are allegations regarding the demand of dowry as also harassment. The allegations are mainly made against accused No.1, the husband of the complainant. Looking to the allegations made in the complaint, they are not serious and they are triable by the Court of Magistrate. They are not exclusively punishable for death or life imprisonment. Regarding apprehension of the prosecution that if the bail is granted, the petitioners may abscond and they may tamper the prosecution witnesses is concerned, reasonable conditions can be imposed which will safeguard the interest of the prosecution. Looking to the entire materials on record, I am of the opinion that it is a fit case to exercise discretion in favour of the petitioners.

5. Accordingly, The petition is allowed. If the petitioners are arrested by respondent police station in Crime No.153/2013 registered for offences punishable under Sections 506, 504 and 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act, petitioners shall be released on bail, subject to

following conditions:-

- I. Each petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty five thousand only) and shall offer a surety for the likesum to the concerned Magistrate Court.
- II. The petitioners shall appear before the investigating officer for the purpose of investigation, whenever called upon to do so.
- III. The petitioners shall not intimidate or tamper with prosecution witnesses, directly or indirectly.
- IV. The petitioners shall attend before the respondent police station once in a month preferably on Sunday between 10.00 a.m. and 11.00 a.m. till completion of investigation.
- V. The petitioners shall appear before the concerned Magistrate Court within thirty days from the date of this order and shall execute personal bond as well as surety bond.

Sd/-

JUDGE Cs/-