

# **Srawan Kumar Kushwaha vs The State Of Madhya Pradesh on 4 March, 2021**

**Author: Rajeev Kumar Dubey**

**Bench: Rajeev Kumar Dubey**

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The High Court Of Madhya Pradesh  
MCRC-9736-2021

(SRAWAN KUMAR KUSHWAHA Vs THE STATE OF MADH

Jabalpur, Dated : 04-03-2021

Shri Krishna Kumar Pandey, learned counsel for t  
Shri Devendra Shukla, learned P.L. for the respo

Heard with the aid of case diary.

This is fifth bail application filed by the applicant under Section 439 of Cr.P.C. Applicant Srawan Kumar Kushwaha was arrested on 28/10/2018 in Crime No.245/2018 registered at Police Station Gurh, District Rewa (M.P.) for the offence punishable under Sections 498-A, 304-B/34 of IPC and 3/4 of Dowry Prohibition Act.

The first, second and fourth bail applications filed by the applicant were dismissed as withdrawn by this Court vide orders dated 09/04/2019, 16/08/2019 & 24/07/2020 passed in M.Cr.C.Nos.11738/2019, 30229/2019 & 10618/2020 respectively and third bail application was dismissed on merit vide order dated 30/11/2019 passed in M.Cr.C.No.46288/2019.

A s per prosecution case, on 07/07/2018 deceased Smt. Suman Kushwaha wife of applicant Srawan Kumar Kushwaha committed suicide by hanging herself. It is alleged that the applicant, who was the husband of the deceased and co-accused Kamta Kushwaha father-in-law a n d Duasiya Kushwaha mother-in-law of the deceased demanded Rs.3,00,000/- and used to harass her and assaulted her, due to which she committed suicide within three years of her marriage.

Learned counsel for the applicant submits that the applicant has not committed any offence and has falsely been implicated in the offence. There is no specific allegation regarding demand of dowry against the applicant in the FIR. The statements of Dinesh Kushwaha (PW/4) & Ramesh Kushwaha (PW/5) have been recorded by the trial Court. Dinesh Kushwaha (PW/4) father of deceased did not depose that applicant demanded dowry. Learned counsel further submitted that there are many omission and contradiction in the statement of Ramesh Kushwaha (PW/5) regarding demand of dowry and harassment of deceased by the applicant. The applicant is in custody since 28/10/2018. The charge-sheet has been filed and the conclusion of trial will take time, hence prayed for release of the applicant on bail. In support of his contention learned counsel placed reliance on the judgments

passed by Hon'ble Apex Court in the 2 MCRC-9736-2021 cases of Bhagirathsinh Judeja Vs. State of Gujrat, AIR 1984 SC 372, Jaya Simha Vs. State of Karnataka, 2007 AIR SCW 7056, Sanjay Chandra Vs. Central Bureau of Investigation, 2011 AIR SCW 6838, Byrraju Ramaa Raju Vs. State through the Central Bureau of Investigation, 2012 AIR SCW 437, State of Bihar & Another Vs. Amit Kumar @ Bacha Rai, AIR 2017 SC 2487, Ram Saran Pal @ Lallu Vs. State of U.P., AIR 2017 SC 2880, P. Chidambaram Vs. Central Bureau of Investigation, (2020) 13 SCC 337, State Represented by Inspector of Police Vs. M. Murugesan & Another, (2020) 15 SCC 251 & Arnab Manoranjan Goswami Vs. State of Maharashtra & Others, 2020 SCC OnLine SC 964.

Learned counsel for the respondent/State opposed the prayer and submitted that applicant the third bail application filed by the applicant was dismissed on merit and thereafter there is no change in circumstance, so he should not be released on bail.

The facts of the cases upon which reliance is placed by the learned counsel for the applicant do not match with the present case. In the cases of Bhagirathsinh Judeja Vs. State of Gujrat, (supra), Jaya Simha Vs. State of Karnataka (supra), Byrraju Ramaa Raju Vs. State through the Central Bureau of Investigation (supra), State of Bihar & Another Vs. Amit Kumar @ Bacha Rai (supra), Ram Saran Pal @ Lallu Vs. State of U.P. (supra), & P. Chidambaram Vs. Central Bureau of Investigation (supra) Hon'ble Apex Court granted bail to the accused looking to the peculiar facts and circumstances of the case and did not lay down any principle regarding release of any accused on bail. In the case of State Represented by Inspector of Police Vs. M. Murugesan & Another (supra) Hon'ble Apex Court only held that the jurisdiction of the High Court came to an end when an application for grant of bail under Section 439 Cr.P.C. was finally decided and did not lay down any principle regarding bail. In the case of Arnab Manoranjan Goswami Vs. State of Maharashtra & Others (supra) applicant / accused filed application invoking the jurisdiction under Articles 226 & 227 of the Constitution of India and Section 482 of the Cr.P.C. and not under Section 439 of the Cr.P.C. for grant of bail. Similarly, in the case of Sanjay Chandra Vs. Central Bureau of Investigation (supra) the crime was registered for the offences punishable under Sections 420, 468 and 471 of the Indian Penal Code, while in this case crime was registered against the applicant for the offences punishable under 3 MCRC-9736-2021 Sections 498-A, 304-B/34 of the IPC and Section 3/4 of the Dowry Prohibition Act. In that case, the Hon'ble Apex Court gave bail to the appellant on the ground that the trial of that case might take longer time than the maximum sentence prescribed for the offences charged against the appellant. But in this case at this stage it can not be said that trial might take more time than the maximum sentence prescribed for the offences charged against the applicant. So all the judgements do not help the applicant.

The first, second and fourth bail applications filed by the applicant were dismissed as withdrawn by this Court vide orders dated 09/04/2019, 16/08/2019 & 24/07/2020 passed in M.Cr.C.Nos.11738/2019, 30229/2019 & 10618/2020 respectively and third bail application was dismissed on merit vide order dated 30/11/2019 passed in M.Cr.C.No.46288/2019, thereafter there is no change in circumstance except custody period of the applicant. Hon'ble Apex Court in the case of Rajesh Ranjan Yadav alias Pappu Yadav v. CBI Through its Director, (2007) 1 SCC 70 held that bail, cannot be granted solely on the ground of long incarceration in jail and inability of accused to conduct the defence. Apex Court in the case of State of M.P. v. Kajad, (2001) 7 SCC 673 observed "It

is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances, the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law as has been held by this Court in Hari Singh Mann v. Harbhajan Singh Bajwa [(2001) 1 SCC 169 : 2001 SCC (Cri) 113] and various other judgments."

Dinesh Kushwaha (PW/4) clearly deposed in his examination-in- chief that deceased Smt. Suman Kushwaha died due to harassment of applicant and Ramesh Kushwaha (PW/5) clearly deposed in his statement before the Court that the applicant, who was the husband of deceased demanded dowry and also assaulted her. At this stage, this Court is not inclined to ascertain the veracity of the statements of Dinesh Kushwaha (PW/4) & Ramesh Kushwaha (PW/5) by evaluating their statements on merits. Looking to the facts and circumstances of the case and the allegation that the applicant is the husband of deceased and he demanded Rs.3,00,000/- and used to harass deceased and also assaulted her, this Court is not inclined to grant bail to the applicant.

Accordingly, M.Cr.C. is rejected.

4 MCRC-9736-2021 (RAJEEV KUMAR DUBEY) JUDGE as