

Prakash S/O Bharamappa Ballari vs State Of Karnataka on 28 January, 2025

Author: Ravi V.Hosmani

Bench: Ravi V.Hosmani

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NC: 2025:KHC-D:1649
CRL.P No. 103709 of 2024

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 28TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

CRIMINAL PETITION NO.103709 OF 2024
[438(CR.PC)/482(BNSS)]

BETWEEN:

1. PRAKASH S/O. BHARAMAPPA BALLARI,
AGED ABOUT 34 YEARS, OCC. COOLIE,
2. SMT. CHANDRAMMA W/O. BHARAMAPPA BALLARI,
AGED ABOUT 55 YEARS, OCC. HOUSEHOLD,
3. BHARAMAPPA S/O. BHARAMAPPA BALLARI,
AGED ABOUT 65 YEARS, OCC. HOUSEHOLD,
ALL ARE R/O ANAJI VILLAGE,
RATTIHALLI TALUK. DISTRICT: HAVERI-581116.

... PETITIONERS

(BY SMT.SARVAMANGALA B.C., ADVOCATE FOR
SRI M.R. HIREMATHAD, ADVOCATE)

AND:

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STATE OF KARNATAKA

BY PSI RATTIHALLI POLICE STATION,
HANGAL TALUK, DIST. HAVERI-581116.

R/BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS, DHARWAD-580011.

... RESPONDENT

(BY SMT.GIRIJA S. HIREMATH, HCGP)

THIS CRIMINAL PETITION IS FILED U/SEC.438 OF CR.P.C. (U/SEC.482 OF BNSS, 2023) SEEKING TO ALLOW THE PETITION AND GRANT THE ANTICIPATORY BAIL TO THE PETITIONERS 1 TO 3/ACCUSED NO.1 TO 3 IN RATTIHALLI P.S. FIR CRIME NO. 0132/2024, FOR THE OFFENCES P/U/SEC.108, 3(5) AND 85 OF BNS PENDING ON THE FILE OF ADDITIONAL CIVIL JUDGE (JR.DN) AND JMFC HIREKERUR, HAVERI DIST. ON SUCH TERMS AND CONDITIONS.

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THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.01.2025, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY THE COURT, MADE THE FOLLOWING:

CAV ORDER

(PER: THE HON'BLE MR. JUSTICE RAVI V.HOSMANI)

This petition under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') is filed seeking for grant of anticipatory bail in Crime no.132/2024 of Rattihalli Police Station for offences punishable under Sections 85 and 108 read with Section 3 (5) of Bharatiya Nyaya Sanhita, 2023 ('BNS', for short) is filed by accused no.1 to 3 (petitioners).

2. Smt.Sarvamangala B.C., learned counsel for Sri M.R. Hiremathad, advocate for petitioners submitted petitioners were innocent law abiding citizens, without criminal antecedents and permanent residents of Anaji village, Rattihalli Taluka. They were however, apprehending arrest in pursuance of a false complaint filed on 11.11.2024 by Smt.Girijamma

(complainant) stating about eight years earlier her daughter Sharadha (victim) married Prakash Ballari (accused no.1). As told by victim, though they led happy married life initially, later accused no.1 along with his parents (accused no.2 and 3)

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began torturing her and quarreling frequently sending her to maternal home, with demands for dowry and by stating in case she failed, they would get accused no.1 married to another. However, victim was consoled and sent back. It was further stated that victim had come back once again for about one month during October previous year and returned to Anaji village on 06.11.2024. But at about 4:00 p.m. on 10.11.2024, complainant received call from one Shivanagouda resident of Meduru village informing that her daughter had committed suicide. On seeing victim's body kept in hospital and finding ligature mark on her neck she suspected same was due to dowry harassment by petitioners and sought action. Based on above, Crime no.132/2024 was registered by Rattihalli Police Station for aforesaid offences.

3. It was submitted, offences alleged were under Sections 85 and 108 read with 3 (5) of BNS. It was submitted, maximum punishment for offence under Section 85 i.e. cruelty against married women was 3 years, while in case of offence of abetment of suicide was imprisonment of upto 10 years.

However, except making general allegations about harassment with demand for dowry, there were no specific overt acts

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alleged against petitioners individually. It was further submitted, marriage of victim and petitioner no.1 was solemnized more than eight years earlier and couple had two sons born to them. There was no assertion about any act which could be stated to be grave enough to have lead victim to commit suicide. It was submitted, complaint was lacking in specific material to constitute 'abetment', except blanket allegations against all petitioners. It was submitted, learned District Judge rejected bail petition by relying on decision in case of Daxaben v. State of Gujarat, reported in (2022) 16 SCC 117, which would in fact favor petitioners herein.

4. It was submitted, Hon'ble Supreme Court had in case of Mahendra Awase v. State of Madhya Pradesh, reported in 2025 SCC OnLine SC 107, held every hyperboles employed in exchanges could not be considered as instigation to commit suicide and cautioned against registration of complaints for offence of abetment of suicide, only to assuage sentiments of distraught family of deceased. Reiterating that there was no direct evidence or nexus between acts alleged and commission of suicide, learned counsel prayed for grant of bail on any conditions undertaking to comply with same.

5. On other hand, Smt.Girija S. Hiremath, learned HCGP for respondent - State opposed petition. It was submitted, complaint contained allegations about persistent demand for dowry apart from physical and mental harassment by all petitioners. Said allegations would indicate petitioners being involved in commission of heinous offences. It was further submitted, investigation was not yet completed and material collected namely statements of various persons recorded during investigation would corroborate and substantiate complaint allegations. It was submitted, admittedly victim had committed suicide in matrimonial home, which she shared with petitioners. Therefore, present case was not fit for grant of anticipatory bail.

6. Heard learned counsel and perused material on record.

7. From above, point that arises for consideration is:

"Whether petitioners are entitled for anticipatory bail on conditions?"

8. As noted above, this petition for anticipatory bail. In view of registration of Crime no.132/2024 of Rattihalli Police

Station for offences punishable under Sections 85 and 108 read with Section 3 (5) of BNS, implicating petitioners, their apprehension of arrest for non-bailable offences stands substantiated.

9. Petitioners are husband and parents-in-law of victim, who died by hanging herself (suicide) on 10.11.2024 in their house at Anaji village. There is no dispute that said incident occurred after seven years of marriage (about eight years as stated in complaint). Offences alleged against petitioners are cruelty against women by husband or relative under Section 85 of BNS punishable with imprisonment for upto 3 years and abetment of suicide under Section 108 of BNS punishable with imprisonment for upto 10 years.

10. As per allegations in complaint, sometime after marriage, petitioners began harassing victim with demand for dowry which led to frequent quarrels and victim being sent to her parents and returning back on intervention by complainant and elders. As victim had borne two children, she was also advised to adjust and carry on in interest of children. It is specifically stated that due to quarrel, victim had come to

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complainant's house during October and stayed with her parents for about a month and returned back to Anaji village

few days prior to incident.

11. Thereafter, complainant received intimation about death of her daughter by suicide. Prima facie reading of Post Mortem Examination Report does not show of any other injury sustained by victim other than ligature mark on her neck and thereby suggesting absence of physical violence. And except, allegation of petitioners subjecting her to physical and mental torture, there would appear no material that would directly implicate any of petitioners. Indeed, statements of various persons knowing both families are recorded, same would at best be circumstantial and not direct.

12. At same time, it would not be appropriate to expect direct evidence about everything that happens between husband and wife. Petitioners claim to be innocent law abiding citizens without any criminal antecedents, which is not disputed. Observations of Hon'ble Supreme Court in Daxaben's case (supra) were in context of scope for interference with proceedings initiated against accused for offences under

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Section 306 of IPC (similar to Section 85 of BNS), wherein it held as follows:

"15. It is not necessary for this Court to go into the question of whether there was any direct or indirect act of incitement to the offence of abetment of suicide, since the High Court has

not gone into that question. Suffice it to mention that even an indirect act of incitement to the commission of suicide would constitute the offence of abetment of suicide under Section 306 IPC."

13. And in Mahendra Awase's case (supra), Hon'ble Supreme Court held :

"11. Section 306 of the IPC reads as under:--

"306. Abetment of suicide. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

12. Section 107 of the IPC reads as under:--

"107. Abetment of a thing.- A person abets the doing of a thing, who-

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

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Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing."

As is clear from the plain language of the Sections to attract the ingredient of Section 306, the accused should have abetted the commission of a suicide. A person abets the doing of a thing who Firstly - instigates any person to do that thing or Secondly - engages with

one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing or Thirdly - intentionally aids, by any act or illegal omission, the doing of that thing.

13. In *Swamy Prahaladdas v. State of M.P.*, [1995 Supp (3) SCC 438], the appellant remarked to the deceased that 'go and die' and the deceased thereafter, committed suicide. This Court held that:--

"3. ...Those words are casual nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite 'mens rea' on the assumption that these words would be carried out in all events. ..."

14. In *Madan Mohan Singh v. State of Gujarat*, (2010) 8 SCC 628, this Court held that in order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. It was further held that the intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for attracting Section 306.

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15. In *Amalendu Pal v. State of W.B.*, (2010) 1 SCC 707, this Court held as under:--

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty

and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

[Emphasis supplied]

16. In order to bring a case within the purview 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 instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

17. M. Mohan v. State, (2011) 3 SCC 626 followed Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618, wherein it was held as under:--

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41. This Court in SCC para 20 of Ramesh Kumar has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC p. 629)

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a

reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

In the said case this Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema (the appellant's wife therein) may necessarily be drawn."

Thereafter, this Court in Mohan (supra) held:--

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push

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the deceased into such a position that he/she committed suicide."

(emphasis supplied)

18. As has been held hereinabove, to satisfy the requirement of instigation the accused by his act or omission or by a continued course of conduct should have created such circumstances that the deceased was left with no other option except to commit suicide. It was also held that a word uttered in a fit of anger and emotion without intending the consequences to actually follow cannot be said

to be instigation."

14. But these observations were made by considering prosecution material after filing of charge sheet. Admittedly, investigation is not yet completed. Hon'ble Supreme Court while considering petition for anticipatory bail in case of dowry death in Samunder Singh v. State of Rajasthan, reported in (1987) 1 SCC 466, held as follows:

"The widespread belief that dowry deaths are even now treated with some casualness at all levels seems to be well grounded. The High Court has granted anticipatory bail in such a matter. We are of the opinion that the High Court should not have exercised its jurisdiction to release the accused on anticipatory bail in disregard of the magnitude and seriousness of the matter. The matter regarding the unnatural death of the daughter-in-law at the house of her father-in-law was still under investigation and the appropriate course to adopt was to allow the concerned Magistrate to deal with the same on the basis of the material before the court at the point of time of their arrest in case they were arrested. It

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was neither prudent nor proper for the High Court to have granted anticipatory bail which order was very likely to occasion prejudice by its very nature and timing. We therefore consider it essential to sound a serious note of caution for future. The High Court is under no compulsion to exercise its jurisdiction to grant anticipatory bail in a matter of this nature. So far as the present matter is concerned, since it has become infructuous, we do not propose to pass any order. Subject to these observations, the appeal is dismissed."

(emphasis supplied)

15. In same context recently, High Court of Delhi in case of Sushma v. State (NCT of Delhi), reported in 2024 SCC OnLine Del 6750, held:

- "10. The learned counsel for the applicant submits that the applicant along with her husband was residing on the first floor of the house while the rest of the family including the deceased resided on the second floor of the house.
11. He submits that the applicant, being a senior citizen aged 60 years, is suffering from various old age diseases including acute arthritis in her knees. He submits that it is very difficult for her to climb stairs to the second floor of the house and had no concern in the day today personal affairs of the deceased and his son.
12. He submits that the sister-in-law and brother-in-law of the victim have already been granted pre-arrest bail by the learned Trial Court vide order dated 21.06.2024 wherein it was noted that no specific allegations of

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demand of dowry or causing harassment to the deceased had been levelled against them.

13. The learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that specific allegations have been levelled against the applicant whereby he cannot claim parity with the co-accused persons who have been granted pre-arrest bail.
14. He submits that the PCR call regarding the death of the victim was made by her friend who had informed that the victim had died an unnatural death. He submits that the accused persons made no attempt to intimate the police authority on their own.
15. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating

application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation has been carried out by the investigating agency.

16. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, advertent to its previous precedents, has discussed the parameters to be considered while considering pre-arrest bail applications, in the case of State of A.P. v. Bimal Krishna Kundu, (1997) 8 SCC 104, has held as under:

"8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985

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SCC (Cri) 297 : AIR 1985 SC 969] :
(SCC p. 600, para 5)

"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal."

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

"The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest."

xxxx xxxx xxxx

12. We are strongly of the opinion that this is not a case for exercising the

discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single

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Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order."

17. This Court, while dismissing the bail application of the applicant's husband, who is a co-accused in the present case, observed that the victim died under unnatural circumstances within three years of her marriage to the applicant's son. This fact raises a statutory presumption under Section 113B of the Indian Evidence Act, 1872. Furthermore, the applicant has been specifically accused of harassing the deceased soon after her marriage, allegedly in connection with dowry demands, which eventually led to her tragic death.
18. This Court relied upon the judgment passed by the Hon'ble Apex Court in the case

of Samunder Singh v. State of Rajasthan, (1987) 1 SCC 466, wherein it was held that in cases involving dowry death, the

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High Court should exercise caution and refrain from granting pre-arrest bail, given the gravity and seriousness of such offences.

19. It was further noted by this Court that, although there was a delay in the statement regarding the cruelty inflicted upon the deceased, such delay cannot, at this stage, be considered detrimental to the prosecution's case. The merit of this aspect will be evaluated during the trial, and it does not warrant the granting of pre-arrest bail at this juncture.
20. It cannot be held, at this stage, that the investigation is being carried out with the intention to injure or humiliate the applicants. The nature and the gravity of the allegations are serious. It is settled law that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [Ref. State v. Anil Sharma, (1997) 7 SCC 187].
21. The investigating agency needs to be given a fair play in the joints to investigate the matter in the manner they feel appropriate.
22. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. It plays a crucial tool in preventing harassment and unjust detention of innocent persons. However, the court must carefully balance the individual's right to liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence, its societal impact, and the need

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- for a comprehensive and unobstructed investigation.
23. While the benefit of proviso to Section 437 of the CrPC, which allows for leniency in granting bail to a woman, sick, or infirm, is recognized under certain circumstances, this benefit cannot be extended at the stage of pre-arrest bail. The applicant is accused of having a role similar to that of her husband/co-accused, whose pre-arrest bail has already been dismissed by the Hon'ble Apex Court.
24. Even otherwise, the protection under Section 437 of the CrPC is not absolute and is subject to the nature and gravity of the offence. In this case, where the applicant is alleged to be directly involved in the incessant demands of dowry and harassment of the deceased, the mere fact of being an elderly woman or infirm does not automatically entitle her to pre-arrest bail. The allegations must be scrutinized based on the merits of the case, and the severity of the crime takes precedence over any personal exemptions under Section 437 of the CrPC.
25. In view of the above, in the present circumstances, this Court is of the opinion that custodial interrogation of the applicants ought not to be denied to the investigating authority.
26. Considering the aforesaid discussion, this Court is of the opinion that the applicant has not made out a prima facie case for grant of pre-arrest bail.
27. The present application is accordingly dismissed."

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16. For aforesaid reasons, point for consideration is answered in negative. Hence, following:

ORDER

Petition is dismissed. However with clarification that observations made herein are on prima facie consideration for purposes of this order and shall not influence final judgment of trial Court.

SD/-

(RAVI V.HOSMANI) JUDGE GRD CT:PA