

(2017) 02 KAR CK 0080

KARNATAKA HIGH COURT

Case No: Criminal Petition No. 200131 of 2017

Mallesha

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision: Feb. 7, 2017

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439
- Dowry Prohibition Act, 1961 - Section 3, Section 4
- Penal Code, 1860 (IPC) - Section 304B, Section 34, Section 498A

Citation: (2017) 1 DMC 825

Hon'ble Judges: B.A. Patil, J.

Bench: Single Bench

Advocate: Mr. Ganesh Naik, Advocate, for the Petitioner; Mr. Prabhugouda S. Patil, HCGP, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B.A. Patil, J.—This petition is filed by the petitioner/accused No. 1 under Section 439 109 of Cr.P.C., seeking regular bail in Crime No. 142/2016 of Gurumitkal Police Station, registered for the offences punishable under Sections 498-A, 304-B r/ w Section 34 of IPC and also for the offences punishable under Sections 3 and a 4 of the Dowry Prohibition Act, 1961.

2. Brief facts leading to filing of the complaint are that, on 20.9.2016, father of the deceased-Soumya filed a complaint alleging that his fourth daughter deceased-Sayamma @ Savitramma was given in marriage to accused No. 1 about three years back and they led happy married life for two years, thereafter, accused No. 1 started harassing the deceased by saying that she is not doing b household work and also demanded additional dowry of Rs. 50,000 and two tholas of gold. It is

further alleged in the complaint that the same was intimidated by the deceased to the complainant and the complainant advised her to adjust and to live in husband's house. It is the further case of the complainant that on 19.9.2016 at about 8.00 a.m., accused No. 1 called the complainant over phone, informed that the deceased has left the house and has not yet come back. Immediately, complainant came to the house of accused No. 1 and on inquiry, he came to know that on 18.9.2016 since the deceased has lost her foot chain in the agricultural land, accused No. 1 scolded her, as such, on 19.9.2016 at about 5.00 a.m., she left the house and did not return to the house. It is the further case of the complainant that on 20.9.2016, complainant received a phone call to the effect that the dead body of female is floating in the well of Somabai and they did went near the well and saw the dead body of Sayamma. Thereafter, the present complaint came to be filed before the police. On the basis of the said complaint, a case was registered in Crime No. 142/2016 for the above said offences.

3. During the course of the argument, it is submitted that the present petitioner had moved the bail petition before the Sessions Court and by order dated 2.1.2016, the Sessions Court has rejected the regular bail petition. Therefore, the petitioner has moved the present petition before this Court.

4. I have heard the learned Counsel for the petitioner and the learned High Court Government Pleader appearing for respondent-State.

5. The main grounds urged by the learned Counsel for the petitioner are that there are no allegations in the complaint regarding the petitioner illtreating and harassing the deceased for the purpose of demand of dowry. It is contended that the other accused persons have already been released on bail on similar allegations and there is no specific allegation against each of the accused persons. It is also contended that the deceased has committed suicide by jumping into the well only because, she has lost the foot chain and the petitioner questioned her about the same. The said act of the deceased is nothing to do with the petitioner. It is further contended that the investigation has already been completed, therefore, the petitioner is not required for investigation or interrogation. On these grounds, he prays for allowing the petition.

6. On the contrary, learned High Court Government Pleader appearing for the respondent-State vehemently contended that there is a prima facie case made out by the prosecution against accused No. 1. The deceased has committed suicide only because of the illtreatment and harassment given by the petitioner and other accused persons. He has further contended that at this juncture, if the petitioner is released on bail, he may tamper with the prosecution witnesses and he may not be available for trial. On these grounds, he prays for dismissal of the petition.

7. I have gone through the copy of the FIR, complaint and other material produced along with the petition.

8. By going through the contents of the complaint and other material, they indicate that the deceased has committed suicide by jumping into the well on 19.9.2016. The complaint has been filed on 20.9.2016 by the father of the deceased. Even though, there is allegation to the effect that the accused persons together have tortured the deceased and demanded dowry and as a result of the same, the deceased has committed suicide by jumping into the well, but the complaint indicates that it is a common allegation made against the petitioner. However, the complaint also indicates that on 18.9.2016 when all the family members of the deceased had been to the field, she missed the foot chain, at that time accused No. 1 has scolded her. Therefore, on the next day i.e., on 19.9.2016 at about 5.00 a.m. when the deceased went out of the house has committed suicide by jumping into the well. When there are two versions in the complaint itself, under such circumstances, I feel that said contradiction has to be adjudicated at the time of trial. When already the investigation has been completed, charge-sheet has been filed and the petitioner is ready to abide by the conditions to be imposed by this Court and ready to offer sureties, that too, on similar allegation when the other accused persons have already been released on bail, even on the ground of parity, the petitioner is entitled to be released on bail.

9. For the above reasons, the petition is allowed and petitioner/accused No. 1 is ordered to be released on bail, subject to the following conditions:

(i) The petitioner shall execute a personal bond for a sum of Rs. 2,00,000 (Rupees two lakh only) with two solvent sureties for the like sum to the satisfaction of the jurisdictional Court;

(ii) The petitioner shall not tamper with any of the prosecution witnesses directly or indirectly;

(iii) The petitioner shall make himself available to the Investigating Officer as and when required;

(iv) The petitioner shall appear before the Trial Court on all the dates of hearing without fail.