

(2016) 04 J&K CK 0032

Jammu & Kashmir High Court

Case No: Petition Under Section 561-A No. 472 of 2015, MP No. 01 of 2015 c/w Bail
Application No. 101 of 2015

Arjun Katal

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision: April 20, 2016

Acts Referred:

- Jammu and Kashmir Criminal Procedure Code, 1989 - Section 561A
- Ranbir Penal Code, 1989 - Section 304B, Section 306, Section 498A

Citation: (2016) 2 JKJ 702

Hon'ble Judges: Mr. Janak Raj Kotwal, J.

Bench: Single Bench

Advocate: Mr. Prince Khanna, Advocate (Spl. PP), for the Respondents/Caveators; Mr. P.N. Raina, Sr. Advocate with Mr. J.A. Hamal, Mr. A.K. Shan and Mr. B.B. Kotwal, Advocates, for the Appellants/Petitioners

Final Decision: Disposed off

Judgement

Mr. Janak Raj Kotwal, J. - Learned trial court vide order dated 07.09.2015 has framed charges under Section 498-A, 304-B and 306 RPC

against accused persons, herein petitioners, in Sessions case No. 41 of 2015 arising in FIR No. 35/2015 of Police Station, Bakshi Nagar, Jammu.

Petitioners seek quashing of the FIR and setting aside and quashing of order dated 07.09.2015 by invoking inherent jurisdiction of this Court under

Section 561-A Criminal Procedure Code (for short the Code) or in alternative the revisional jurisdiction. By another application petitioners, except

Ravinder Kotwal, seek release on bail.

2. Heard learned counsel for the parties and perused the record.

Petition under section 561-A No. 472 of 2015 MP No. 01 of 2015

3. Prosecution story, briefly, is that one Neha Naraina (hereinafter referred to as the deceased) was married to petitioner No. 1, Arjun Katal, on

19.11.2012. On 28.03.2015 her father, PW Rajinder Singh, lodged written information at Police Post, Sarwal stating that the mother of the

deceased has received a telephone call from the deceased saying that she was at Akhnoor and was going to end her life as ever since her marriage

her in-laws had been harassing and causing mental torture to her for demand of dowry. He stated further in that information that whereabouts of his

daughter are not known. On this information FIR No. 35/2015 under section 498-A RPC was registered. On 29.03.2015 dead body of the

deceased was found in river Chenab and after its postmortem examination offence under section 306 RPC was added to the FIR. After

investigation it was found that on the demand of the petitioners the father of the deceased had given dowry worth fifteen-twenty lac rupees at the

time of the marriage of his daughter. However, few days after the marriage the petitioners had started beating and harassing the deceased for

bringing more dowry. They had demanded cash worth five lac rupees from her parents. They used to confine the deceased in a room, keep her

hungry and away from her child and used to beat her. On 27.03.2015 deceased had gone to her parents' house. Her husband, Arjun Katal, had

also come there and misbehaved with her and her parents for and in connection with the demand of dowry and threatened them before leaving

their house. Because of the threatening by her husband the deceased returned to her house. All the four petitioners gave her beating in a cruel

manner inasmuch as their cruelty got out of her capacity of tolerance. The Investigating Officer, thus, concluded that deceased was an educated girl

belonging to a gentle family. She never wanted to be a burden on her parents because of harassment and demands of dowry by her in-laws nor

was she in a position to tolerate the harassment by her in-laws. She ultimately was compelled to end her life and her dead body was fished out

from river Chenab on 29.03.2015. Charge sheet for commission of offence under section 498-A, 304-B and 306 RPC was, thus, filed against the

petitioners by the police.

4. It is contended by the petitioners that after their marriage in the year 2012, the deceased and her husband had been living a happy married life and their marriage had procreated a child. There never had been any complaint about commission of any domestic violence by the petitioners and there is no proximate and live link between any act of cruelty said to have been committed by the petitioners for demand of dowry and death of the deceased. It is contended that learned trial judge has framed the charges without considering the material produced by the prosecution inasmuch as there is nothing in the material collected by the I.O. sufficient to connect the petitioners with any demand of dowry or cruelty to the deceased and no prima facie case for proceeding against the petitioners for commission of any offence is made out.

5. Mr. P.N. Raina, learned Senior Counsel, appearing for the petitioners, in his submissions, mainly, assailed the charge under section 304-B RPC.

Reading out to the court the statements of the witnesses, in particular the parents of the deceased, recorded under section 164-A of the Code Mr.

Raina sought to point out that it is only after the unfortunate death of the deceased that an effort was made by her parents and relatives to show as

if everything was hellish with the deceased right from the day one of her marriage, notwithstanding that the deceased all along was living in the

house of her in-laws without any complaint of harassment or torture to her for or in connection with demands of dowry and the marriage had

procreated a child. Reading out section 304-B RPC, Mr. Raina pointed out that one of the important ingredients of offence under this section is

that 'soon before her death' the deceased was subjected to cruelty or harassment by her husband or any relative of the husband for or in

connection with a demand for dowry. Mr. Raina submitted that material collected by the I.O. does not show any live link between any act of

violence or harassment to the deceased and the death of the deceased. Mr. Raina cited a Supreme Court judgment in *Sher Singh alias Partapa*

v. State of Haryana, (2015)3 SCC 724.

6. Per contra, Mr. Prince Khanna, learned counsel for the State (Spl. PP), while reading out statements of prosecution witnesses recorded during

investigation, in particular parents of the deceased and her maternal uncle, PW Sukbir Singh, sought to point out, what he called, evidence relating

to the acts of cruelty and harassment for and in connection with demand of dowry by the petitioners immediately prior to the date of occurrence.

Mr. Khanna argued that there is sufficient material to show that ever since her marriage right up to the time of her death the petitioners had been

harassing the deceased for bringing more dowry. Mr. Khanna cited a three-Judge Bench judgment of the Supreme Court in *Rajinder Singh v.*

State of Punjab, AIR 2015 SC 1359 underlining therein the observation of the learned court that the term 'soon does not mean immediate and all

that is necessary is that demand for dowry should not be stale but should be the continuing cause for the death of the married women within seven

years of her death'. Mr. Khanna also argued that evidence collected during investigation is sufficient to make out a prima facie case against the

petitioners under aforementioned sections and at this stage this Court is not expected to undertake such appreciation of the evidence so as to reject

the same. Mr. Khanna cited a latest judgment of the Supreme Court dated 10.07.2015 in *State Rep. by Inspector of Police v. Mariya Anton*

Vijay and others, Criminal No. 836 of 2015 in which Their Lordships have held illegal and erroneous approach of the High Court in going into

the questions of fact, appreciating the material produced in support of charge sheet drawing inference on reading the statements of the accused,

applying law and then coming to a conclusion that no prima facie case is made out in exercise of inherent jurisdiction under section 482 (561-A) of

the Code.

7. Having read the statements of the witnesses, more particularly the aforementioned witnesses, and perused the record, I am not persuaded to

take a view that there is no sufficient ground for proceeding against the petitioners for the offences they have been charged for by the trial court,

more particularly the offence under section 304-B RPC or to say that no prima facie case for framing charges is made out. The standard of proof

applicable at the time of final judgment in a case cannot be applied at the stage of consideration for the purpose of framing charge nor can the court

see whether there is sufficient ground for conviction of the accused. The material relied upon by the prosecution is to be taken on its face value for

arriving at a prima facie opinion whether there is sufficient ground for proceeding against the accused for commission of an offence or offences or

not. There is no scope of appreciating the evidence and arriving at a conclusion that no offence has been committed by the accused.

8. Without dilating much on facts of the case and ingredients of the offences at this stage lest that may not cause prejudice to the defence of the

petitioners at trial, I would hold that there is sufficient ground for framing charges under aforementioned sections against the petitioners and no case

for showing any indulgence in exercise of the inherent or the revisional jurisdiction of this Court is made out. Petition under section 561-A of the

Code is, therefore, dismissed.

Bail Application No. 101 of 2015

9. This application for bail has been moved on behalf of husband of the deceased, Arjun Katal, mother-in-law, Smt. Sudesh Kumari Kotwal and

brother-in-law, Angad Katal. Record reveals that all of them as also father-in-law of the deceased were arrested in the last week of March, 2015

immediately after the incident. The father-in-law, however, has been released on bail at pre trial stage on health ground. The brother-in-law has

also been released on interim bail by the learned trial court on 08.02.2016.

10. Offences under sections 498-A, 304-B and 306 RPC are non-bailable so in terms of section 497 read with section 498 of the Code the grant

or refusal of bail as in any other non-bailable offence lies in the discretion of the bail/trial court to be exercised after according consideration to well

known factors, like the nature and seriousness of the offence, nature of accusation, character of evidence, reasonable apprehension of the accused

jumping over the bail or tampering with the prosecution evidence, the circumstances which are peculiar to a given case and larger interest of public

in granting or refusing bail.

11. There, however, is a remarkable change in legal position with the enactment of the Jammu and Kashmir Criminal Laws (Amendment) Act,

2013, whereby, while inserting section 304-B and some other sections in the RPC, section 497-C has been inserted in the Code. Section 497-C,

which relates to heinous offences of dowry death' punishable under section 304-B RPC 'voluntary causing of grievous hurt by use of acid, etc.'

punishable under section 326-A 'trafficking of persons' punishable under section 370 and offences involving rape punishable under sections

376,376-A, 376-C, 376-D and 376-E RPC, mandates, firstly, that bail cannot be granted ex parte, that is, without giving public prosecutor

(State) opportunity of being heard on the application for bail moved on behalf of the accused. By virtue of the proviso to section 497-C (1) a

restriction has been imposed on the discretion of the court in granting bail to a person accused of an offence covered under this section, for

instance an offence punishable under section 304-B, if the court, on perusal of the case diary or the report made under section 173 of the Code is

of the opinion that there are reasonable grounds for believing that the accusation against such person is 'prima facie true'. This restriction has been

imposed in addition to the other restrictions under the Code or any other law for the time being in force. Section 497-C(1) and its provisions are

relevant, which I reproduce for ready reference:

497-C. Special provision regarding bail in certain offences against women etc.-(1) Notwithstanding anything contained in this Code no

person accused of an offence punishable under section 304-B, 326-A, 370,376,376-A, 376-C, 376-D or 376-E of Ranbir Penal Code, shall if in

custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for

such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made

under section 173 of the Code, is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima

facie true.

(underlining by me)

12. It was urged at bar by the counsel for the State that petitioners have committed heinous offences, the trial court on finding prima facie case has

framed charges against them under section 304-B RPC, besides sections 306 and 498-A so they cannot be released on bail in view of the proviso

to section 497-C of the Code. Learned counsel urged also that in terms of section 114-CC of the Evidence Act inserted vide the Amendment Act

of 2013(supra), there is a presumption of causing dowry death once it is 'shown' that death had taken place in the circumstances provided under

section 304-B. An important question that was raised and discussed at bar was, whether with the framing of charge against an accused for an

offence covered under section 497-C of the Code the restriction imposed under proviso to that section will straightway apply. Learned counsel for

the State sought to draw a parallel between framing of charge under section 269 of the Code and the restriction imposed under proviso to section

497-C.

13. Per contra, learned senior counsel for the petitioners, urged that the parents-in-law and the brother-in-law of the deceased have been roped in

as it normally happens in the cases where a young lady commits suicide or dies in unnatural circumstances. While referring to record of the case, in

particular statements of the family members of the parents of the deceased, recorded during investigation, learned counsel sought to point out that

there is no material to suggest that any act of cruelty or harassment as contemplated under section 304-B was committed soon before the incident

or any act of domestic violence or demand of dowry was ever reported. Learned counsel urged vehemently that the brother-in-law of the

deceased was pursuing a professional course on regular basis outside the State and was not present in the house during those days but the I.O.

deliberately did not investigate this aspect of the case. Learned counsel cited a Delhi High Court Judgment dated April 6, 2015 in Nitin Kumar

v. State, case No. 437 of 2015 in which a person accused of offences under sections 498-A and 304-B IPC arrested on 02.10.2014 was

released on bail.

14. Proviso to section 497-C(l) is quite significant but its implication needs to be clearly understood. Careful reading of the proviso would show

that the legislature has particularized the situation in which the bail court will not exercise discretion of granting bail in favour of a person accused of

offence(s) mentioned in section 497-C including offence under section 304-B RPC. Whereas the existence of a prima facie case punishable under

any one or more of these sections against the accused suffices for framing of charge(s) against him, but that alone will not give rise to the restriction

against granting him bail. What more is required for refusing bail to the accused is the existence of reasonable grounds for the court believing that

accusation against the accused is 'prima facie true'. Thus, besides making out a prima facie case under any one or more of the sections mentioned

in section 397-C, the record of the case should also make out reasonable grounds for believing that the accusation against the accused is 'prima

facie true'.

15. On a plain reading of section 269 of the Code and proviso to section 497-C (1) more evident is the dissimilarity between the two provisions

rather than a similarity though both the provisions can be read in juxtaposition. Under section 269, court shall frame charge against accused if the

judge is of the opinion that there is ground for presuming that the accused has committed an offence. To say otherwise, charge shall be framed if

after consideration of record of the case and hearing both sides, court finds prima facie commission of an offence by the accused. On the other

hand proviso to section 497-C does not contemplate prima facie commission of offence by the accused alone but also the prima facie truth thereof.

It provides that bail shall not be granted if the court is of the opinion that there are reasonable grounds for believing that accusation against accused

is 'prima facie true'. Obviously, standard to be applied for refusal of bail is higher than the standard to be applied for framing of charge. To say in

juxtaposition, whereas in framing charge court may be of prima facie opinion that offence has been committed by the accused, for refusing bail

court should be of the opinion also that accusation is 'prima facie true'.

16. Insofar as the presumption under section 114-CC of the Evidence Act, which is pari materia section 113-B of the Central Evidence Act is

concerned, such presumption cannot be applied at this stage in view of the law laid down by the Hon'ble Supreme Court in Sher Singh's case,

(2015) 3 SCC 724 (supra), where Their Lordships, while interpreting section 304-B of IPC and section 113-B of the Evidence Act have held in

para 16 of the reporting that it is for the prosecution to prove that a dowry death has occurred. Only after leading evidence in proof of the charge

of dowry death before the court, prosecution can rely upon presumption provided under section 113-B of the Evidence Act. Such presumption

cannot be invoked on the basis of the material collected by the I.O. until the material is given the shape of legal evidence before the trial court.

17. In the case on hand, it has been noticed that the marriage of the couple had taken place more than two years prior to the unfortunate incident.

The marriage had procreated a male child. There seems substance in the argument of learned counsel for the petitioners that entire evidence

implicating the whole family including parents-in-law and brother-in-law of the deceased, besides the husband, cropped up after the incident and

that the material collected by the I.O. does not indicate that earlier ever there had been any report of any domestic violence or an incident of

harassment and violence relating to demand of dowry by the petitioners and also that the I.O did not even investigate whether the brother-in-law

was also present in the house during those days or not.

18. On careful reading of the statements of material witnesses, who mainly are the parents of the deceased and her maternal uncle, Sukhdev Singh,

though there is a prima facie case of commission of offences by the petitioners, it would not be safe to form an opinion that accusation against the

family members, that is, parents-in-law and the brother-in-law of the deceased are prima facie true. Bar imposed under proviso to section 497-C,

therefore, is not attracted.

19. As said above, all the petitioners were arrested immediately after the incident. The father-in-law has been released on bail at pre trial stage on

health ground on 13.05.2015. Bail to other three petitioners at that time was refused by a learned Session Judge keeping in view the serious nature

of allegations and holding that they were not entitled to bail at that stage. Bail came to be refused to them even after filing of the charge-sheet by the

learned trial court vide order dated 06.10.2015 taking the view that no new circumstances were brought to the notice of the court and observing

that 'application for bail was moved within one month from the rejection of earlier bail application, i.e. 13.05.2010 which shows that accused

persons are hell-bent to flood this court with bail applications one after the other without any reasonable ground'. Learned trial judge obviously did

not accord consideration to the prayer for bail in light of the material collected by the I.O. during investigation. Learned trial court did not appreciate the difference between investigation stage and trial stage in criminal cases. It needs to be pointed out that whereas at investigation stage I.O. is in the process of collecting material that can be relied upon at trial, at trial stage entire material including statements of the witnesses recorded by the I.O. is available to the trial court. The brother-in-law has been released on interim bail by the trial court during pendency of this bail application on 08.02.2016. The husband of the deceased and the mother-in-law, however, continue in incarceration, now in judicial custody for over a year since their arrest in last week of March, 2015.

20. It has been contended that the mother-in-law of the deceased is a retired teacher and a sick person. It was contended at bar that she is in her mid sixties. It has been contended also that the brother-in-law is pursuing a professional course outside the State of Jammu and Kashmir and was not even present in Jammu during the days when the incident took place. These factual contentions have not been denied in reply filed to the bail application.

21. Since the restriction under proviso to section 479-C(l) is not attracted for the reason stated above, the only question now is whether in the facts and circumstances of the case petitioners are entitled to bail in terms of section 497 Cr.P.C read with section 498 or not. Learned counsel for the petitioners has cited the Delhi Court judgment dated April 6, 2015 in case No. 437 of 2015 (supra) in which a person accused of offences under sections 498-A and 304-B RPC on 02.10.2014 was released on bail.

22. Arrest and detention of a person and his release on bail at investigation or trial stage involve important issues of great public importance relating to personal liberty on one hand and public interest on the other. I may aptly quote the introductory remarks of the Supreme Court in *Siddharam*

Satlingappa Mhetre v. State of Maharashtra, (2001) 1 SCC 694:

The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The

law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

23. It is also useful to refer to the anxiety of the Hon'ble Supreme Court in regard to offences arising out of matrimonial disputes expressed by

Their Lordships in *Arnesh Kumar v. State of Bihar and anr*, (2014) 8 SCC 273 as introductory remarks to the judgment:

There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A

of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The

fact that Section 498-A is a cognisable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as

weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In

a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.

24. In *Arnesh Kumar's* case, Hon'ble Supreme Court also observed that arrest brings humiliation, curtails freedom and scars forever. In *Dr.*

Vinod Bhandari v. State of M.P. judgment dated 04.02.2015, Criminal Appeal No. 220 of 2015 Supreme Court has reiterated that there is

presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that

may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support

thereof are not the only consideration for declining bail.

25. Experience would show that whenever a woman dies an unnatural death shortly after her marriage or within seven years of the marriage, her

parents feel that her husband and in-laws are responsible for such death. That feeling of the parents of the deceased itself becomes a sufficient

ground for booking the husband and the parents and quite often siblings and other relatives of the husband. Whether they were responsible for the death of the deceased or not can be ascertained only after investigation and verified after trial but they are arrested in any case. The important question relating to their liberty, thus, arises for consideration of the bail/trial court.

26. As said above, petitioners had been and presently two of them, that is mother-in-law and husband of the deceased are in custody for last more than one year. Charges against them have been framed by the trial court on 07.09.2015. Minutes recorded in the trial court file would show that but for one witness whose statement has been recorded on 22.12.2015, prosecution has not produced any other witness or even parents of the deceased during three or four calendars fixed by the court. The accusations do not merit refusal of bail to the mother-in-law and the brother-in law of the deceased at this stage after more than a year of their arrest. All the material witnesses are family members of the parents of the deceased inasmuch as no apprehension of the petitioners' tampering with the evidence or jumping over the bail has been expressed by the State nor can be visualized. Refusing bail to them at this stage would be nothing but punishing them for their alleged involvement in the death of the deceased which is not permissible under law.

27. Viewed thus, the mother-in-law of the deceased, petitioner-Sudesh Kotwal and the brother-in-law, Angad Katal are admitted to bail subject

to their furnishing personal bonds in the amount of Rs. 50,000/ each along with surety each in the like amount to the satisfaction of the trial court.

Petitioner, Sudesh Kotwal shall be released after bail bonds are furnished. Bail to the husband, Arjun Katal, at this stage is refused. It shall,

however, be open for him to approach the trial court afresh after the prosecution gets further reasonable opportunity of producing material

prosecution witnesses, who are the members of the parental family of the deceased, in particularly her mother.

28. Record of the trial court be remitted back along with a copy of this order.

29. Disposed of.