

20. In the present case, while considering the case in view of Sections 107 and 306 IPC, I find that there is no evidence in the case of alleged abetment of suicide because there is no active act shown on the part of the applicants in any manner so that the deceased was compelled to commit suicide. It is apparent on the face of record that the loan was sanctioned in the name of the deceased, who could not repay the same, then how the applicants being brothers, could have been held responsible for abetment in commission of suicide by the deceased. There is no evidence or any adverse material between the applicants and the deceased, which could establish that applicants were responsible to repay the loan amount which was advanced in the name of the deceased. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused, but in the present case, no evidence is available to establish that applicants were having mens rea in abetment of commission of suicide. Therefore, continuance of the present criminal proceedings against the applicants is nothing but an abuse of process of law.

21. Application is accordingly allowed and the entire proceedings of Criminal Case No.56450 of 2016, State Vs. Sharad Kumar and another, arising out of Case Crime No.135 of 2016, under Section 306 IPC, Police Station Maheshganj, District Pratapgarh pending in the court of Judicial Magistrate, Pratapgarh against the applicants, are hereby quashed.

(2025) 1 ILRA 607
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.01.2025

BEFORE

THE HON'BLE KRISHAN PAHAL, J.

Criminal Misc. Bail Application No. 7768 of 2024

Raghvendra Singh ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:

Sri Dharmendra Singh, Sri Kunwar Bhaskar Parihar, Ms. Neeja Srivastava, Sri Surya Bhan Singh, Sri Veerendra Singh, Sri Vikas Sharma, Sri V.P. Srivastava (Sr. Advocate)

Counsel for the Respondents:

Ms. Abhilash Singh, Sri Ashutosh Yadav, G.A.

Criminal Law - Indian Penal Code, 1860 - Sections 498A, 304B & 328 - Dowry Prohibition Act, 1961 - Section 3/4 - Constitution of India, 1950 - Article 21 - Bail - In FIR, there was demand of additional dowry from deceased person by applicant along with other family members, forcibly administered her some poisonous material in night of 04/05.06.2023 at about 1:33 a.m., she informed said fact to her father, who rushed to house of in-laws of his daughter and took her to Hospital, froth was coming up from her mouth, it was smelling pungent and during treatment she expired. (Para 4, 5)

Contention by applicant, FIR was delayed by about ten days, no explanation given by prosecution - Cause of death could not be ascertained, case of suicide as victim consumed aluminium phosphide as common pesticide used in house - During inquest proceedings, informant not whispered about demand of dowry and St.d she expired under mysterious circumstances - Further argued that she had close relationship with Devar of her elder sister , talked to him in late hours of night, confirmed by CDR - During investigation, mobile numbers of Devar not supplied to Investigating Officer deliberately so that WhatsApp chats are not retrieved. (Para 7, 8, 9, 10, 11, 15)

Held, conversations between them are admitted and cast doubt on case, defence has to put its case on basis of preponderance and probabilities only - There was presumption u/s 113B, Indian Evidence Act which may be raised in case but prior to it, duty of prosecution to prove its case beyond reasonable doubt. (Para 31)

Bail application allowed. (E-13)

List of Cases cited:

1. Niranjan Singh & anr. Vs Prabhakar Rajaram Kharote & ors., AIR 1980 SC 785
2. Satender Kumar Antil Vs Central Bureau of Investigation & ors., 2022 INSC 690
3. Manish Sisodia Vs Directorate of Enforcement 2024 INSC 595

(Delivered by Hon'ble Krishan Pahal, J.)

[1] List has been revised.

[2] Heard Sri V.P. Srivastava, learned Senior Counsel assisted by Ms. Neeja Srivastava and Sri Dharmendra Singh, learned counsel for the applicant and Sri Ashutosh Yadav, learned counsel for the informant as well as Sri Deepak Kumar Singh, learned A.G.A. for the State and perused the record.

[3] Applicant seeks bail in Case Crime No. 415 of 2023, under Sections 498A, 304B, 328 I.P.C. and Section 3/4 of the D.P. Act, Police Station Kotwali, District Fatehpur, during the pendency of trial.

PROSECUTION STORY:

[4] The marriage of the daughter of the informant was solemnized with the applicant as per Hindu rites on 22.02.2023 and enough pleasantries and gifts were

exchanged in it. It is alleged that the applicant along with other family members is stated to have subjected his daughter to cruelty for demand of a Fortuner car as an additional dowry thereby had forcibly administered her some poisonous material in the night of 04/05.06.2023 at about 1:33 a.m. whereby she informed the said fact to her father, who rushed to the house of the in-laws of his daughter and took her to Sadar Hospital, Fatehpur whereby froth was coming up from her mouth and it was smelling pungent.

[5] As such, the doctor had conducted the procedure of gastric lavage and referred her to Kanpur seeing her deteriorated condition. On way to Kanpur, daughter of the informant is stated to have expired.

ARGUMENTS ON BEHALF OF APPLICANT :

[6] The applicant has been falsely implicated in the present case and he has nothing to do with the said offence.

[7] The FIR is delayed by about ten days and there is no explanation of the said delay caused.

[8] The cause of death could not be ascertained as such the viscera was preserved and during the forensic analysis, aluminium phosphide chemical was found as such the cause of death was stated to be aluminium phosphide only.

[9] It is a clear cut case of suicide as the victim had consumed aluminium phosphide which is a common pesticide used in the house and she had consumed it herself.

[10] The inquest proceedings of the deceased person was conducted the

same day i.e. on 05.06.2023 and the informant had moved an application before the Investigating Officer for the same whereby he has not whispered a single word about the demand of dowry and he has simply stated that his daughter had expired under mysterious circumstances, as such her post mortem may be conducted. The informant is panch witness no.1 in the inquest proceedings.

[11] It is true that the deceased had expired within a span of about four months of her marriage but the deceased was having close relationship with the younger brother-in-law (Devar) of her elder sister and she used to talk to him even in the late hours of the night.

[12] The said fact stands fortified from the C.D.R. details which categorically indicates that the deceased immediately before her marriage and after her marriage used to talk to him during the night.

[13] The mobile of the deceased was 8795779578 and that of the brother-in-law (devar) of her elder sister was 7068224351. The relevant dates and times of her talks in detail are being highlighted as follows :-

Sr no.	Date	Time	Duration
1.	19.02.2023	1: 53 : 28 hrs.	2305 seconds
2.	27.02.2023	4 : 37: 25 hrs.	155 seconds
3.	27.02.2023	4 : 40: 13 hrs.	2057 seconds

4.	27.02.2023	5 :17: 20 hrs.	2216 seconds
5.	14.03.2023	1 : 24 : 49 hrs.	10794 seconds
6.	14.03.2023	4 : 26 : 41 hrs.	6624 seconds

[14] As such, it is clear cut case of suicide as she did not want to marry the applicant, rather she wanted to marry the brother-in-law of her elder sister.

[15] It has come up during investigation that the mobile numbers of the brother-in-law of the sister of deceased has not been supplied to the Investigating Officer deliberately so that the WhatsApp chats are not retrieved whatsoever.

[16] The C.D.Rs. have been filed in the supplementary affidavit itself.

[17] Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.

[18] There is no criminal history of the applicant. The applicant is languishing in jail since 22.09.2023. The applicant is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF INFORMANT :

[19] The bail application has been opposed on the ground that the Field Unit was called to the place of occurrence and they had retrieved the mobile phones of the deceased as well as her husband the same day, as such the said details could have been taken up by the Investigating Officer by retrieving the mobile of the deceased from the said Field Unit Team.

[20] There are no WhatsApp chats between the two. In the modern era, it is but common for one and all to communicate with each other on WhatsApp and it would have been open and shut case if those WhatsApp chats had been retrieved.

[21] The said WhatsApp chats have deliberately been concealed by the Investigating Officer in collusion with the applicant.

[22] The statement of brother-in-law of the elder sister of the deceased was recorded and he has categorically stated that the mobile of the sister of the deceased was not working, as such she used to take his mobile phone and talk with her sister which is but natural, as such the applicant is not entitled for bail.

[23] In the light of presumption under Section 113-B of the Indian Evidence Act, the onus lies on the applicant to rebut the said fact as the deceased had expired within a period of four months of her marriage after forcibly administering her poison within the precincts of the house of the applicant.

ARGUMENTS ON BEHALF OF STATE :

[24] The bail application has been opposed on the ground that the deceased had expired within seven years of her

marriage and there was demand of a Fortuner car as an additional dowry from the deceased person, although he has not disputed the fact narrated in compliance affidavit which states that the mobile phones could not be obtained during investigation and as such, the conversation details could not be retrieved. The conversations between the deceased and the brother-in-law (Devar) of the elder sister of the deceased are admitted.

CONCLUSION:

[25] In light of the judgement of the Supreme Court passed in *Niranjan Singh and another vs Prabhakar Rajaram Kharote and others AIR 1980 SC 785*, this Court has avoided detailed examination of the evidence and elaborate documentation of the merits of the case as no party should have the impression that his case has been prejudiced. A prima facie satisfaction of case is needed but it is not the same as an exhaustive exploration of the merits in the order itself.

[26] The well-known principle of "*Presumption of Innocence Unless Proven Guilty*," gives rise to the concept of bail as a rule and imprisonment as an exception.

[27] A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because the person is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable. The said principle has been recapitulated by the Supreme Court in *Satender Kumar Antil*

Vs. Central Bureau of Investigation and Ors., 2022 INSC 690.

[28] Reiterating the aforesaid view the Supreme Court in the case of Manish Sisodia Vs. Directorate of Enforcement 2024 INSC 595 has again emphasised that the very well-settled principle of law that bail is not to be withheld as a punishment is not to be forgotten. It is high time that the Courts should recognize the principle that "bail is a rule and jail is an exception".

[29] Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

[30] It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA.

[31] The said conversations cast doubt on the case but the defence is not supposed to prove its case beyond reasonable period, it has to put its case on the basis of preponderance and probabilities only. It is true that there is presumption under section 113B of the Indian Evidence Act which may be raised in the case but prior to it, it is the utmost duty of the prosecution to prove its case beyond reasonable doubt.

[32] Considering the facts and circumstances of the case, submissions made by learned counsel for the parties,

and taking into evidence and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is **allowed**.

[33] Let the applicant- **Raghvendra Singh Alias Prince** involved in aforementioned case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

(i) The applicant shall not tamper with evidence.

(ii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

[34] In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

[35] It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.
