

(2002) 08 CHH CK 0005

In the Chhattisgarh High Court

Case No : Misc. Cr. Case No's. 146, 148, 189 and 662 of 2002

Manoj Agrawal and Others

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 439
Penal Code, 1860 (IPC) — Section 304B

Citation : (2002) 4 CGLJ 81 : (2003) CriLJ 3519 : (2002) 4 MPHT 35 : (2003) 2 MPJR 72

Hon'ble Judges : P.C. Naik, J

Bench : Division Bench

Advocate : S.C. Dutt, Kishore Bhaduri, Hamida Siddique and Roop Naik, V.C. Ottalwar and Rajeev Srivastava, for the Appellant; N.K. Shukla, A.A.G., Sanjay K. Agrawal, Dy. A.G. and S. Singhai, Dy. G.A., for the Respondent

Final Decision : Allowed

Judgement

P.C. Naik, J.—Since all the four applications filed u/s 438 of the Code of Criminal Procedure relate to Crime No. 705/2001, Police Station, Civil Lines, Raipur, they were heard analogously and are being disposed of by this common order.

2. The applicant in M.Cr.C. No. 662/2002 Manish Agrawal is the husband, the applicant in M.Cr.C. No. 148/2002 Laxmi Narayan Agrawal is the father-in-law, the applicant in M.Cr.C. No. 189/2002 Smt. Vimla Devi Agrawal is the mother-in-law and the applicant in M.Cr.C. No. 146/2002 Manoj Agrawal is the "Devar" of deceased Puja.

3. Apprehending their arrest in connection with Crime No. 705/2001, registered by Police Station, Civil Lines, Raipur for an offence punishable u/s 304B of the IPC, the applicant Manoj Agrawal (in M.Cr.C. No. 146/2002) along with his sister Dr. Sarita Agrawal had moved an application (Bail Petition No. 3146/2001) u/s 438 of Cr. PC before the Lower Court which, on 2-1-2002, has allowed the application with respect to Dr. Sarita Agrawal. The prayer of applicant-Manoj

Agrawal was rejected. Likewise, the applications of applicant-Laxmi Narayan Agrawal in M.Cr.C. No. 148/2002 (Bail Petition No. 3147/2001), that of applicant-Manish Agrawal in M.Cr.No. 146/2002 (Bail Petition No. 3149/2001) and that of applicant-Smt. Vimla Devi Agrawal in M.Cr.C. No. 189/2002 (Bail Petition No. 3148/2001) were rejected by the 7th Additional Sessions Judge, Raipur on 2-1-2002. Accordingly, all the four applicants have come up before this Court for grant of anticipatory bail.

4. The bail applications are being opposed by the State. The complainant, i.e., father (Shyam Sunder Agrawal) of the deceased/Puja has also filed an objection. According to the objector, the deceased was subjected to cruel treatment for want of dowry resulting into her death and if the applicants are released they being well off are capable of influencing the investigating agency and that the death of Puja is in fact a case of murder but because of the influence of the accused persons, the investigating agency is trying to convert the case of murder into a case of suicide or dowry death.

5. Admittedly, the marriage of applicant-Manish Agrawal and deceased/Puja was performed on 24-5-2001. Both husband and wife stayed in the matrimonial home for a few days and thereafter they left for their honeymoon trip to the South on 5-6-2001, from where they returned to Raipur on 17-6-2001. After staying at Raipur for about 3 to 4 days they left for Bhilai and stayed there from 22-6-2001 to 23-6-2001 and on the same day returned to Raipur. On 26-6-2001 Puja died on account of burn injuries.

6. Before proceeding further, the Court would like to deal with the objection raised by the learned State Counsel, Additional Advocate General as also learned Counsel appearing for the Objector. It is their submission that in a case where an offence u/s 304B of IPC has been registered, anticipatory bail u/s 438, Cr.PC cannot be granted. Since the arguments are advanced on this aspect, it becomes necessary to deal with the same at this stage. To begin with, it may be stated that the objection is not that bail in such case ought not to be granted, but the objection is that it cannot be granted and for this reason reference to the provisions contained in Sections 437, 438 and 439, Cr.PC becomes necessary since the said three provisions relate to grant of bail.

7. Section 437, Cr.PC, relates to cases where bail can be taken in the case of non-bailable offence. Needless to say, Section 438, Cr.PC relates to anticipatory bail in non-bailable offence and Section 439, Cr.PC deals with special powers of High Court or the Court of Session regarding bail. Section 437, Cr.PC itself provides that the powers shall not be exercised in respect of a person if there appear some reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. Such a provision is significantly absent and has not been incorporated by the lawmakers in Section 438 or Section 439, Cr.PC. Had it been the intention of the Legislature that those provisions would not apply with respect to an offence punishable with death or imprisonment for life, the legislature would definitely have incorporated the same

in Section 438 or 439, Cr.PC as it did in the case of provisions contained in Section 437, Cr.PC. Therefore, it follows that this is a case of deliberate omission and it would not be intended by the Legislature that the provisions contained in Section 438 or 439, Cr.PC shall not apply with respect to an offence punishable with death or imprisonment for life. Thus, the contention that the Court has no power to grant anticipatory bail in cases punishable with death or imprisonment for life, in the case at hand an offence u/s 304B, cannot be accepted. Thus, the powers can be exercised by a Court in a given case where there is reasonable apprehension that a person is likely to be arrested in connection with a non-bailable offence.

8. Sub-section (1) of Section 438, Cr.PC provides that when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this Section and that Court may, if it thinks fit, direct that in the event of such arrest he shall be released on bail. Thus, what is necessary to be seen before exercising powers u/s 438, Cr.PC is whether the person who has approached the Court has reasons to believe that he may be arrested on an accusation of having committed a "non-bailable offence". Thus, the Court is required to see whether there is reasonable apprehension in the mind of the applicant that he is likely to be arrested and whether the offence is a non-bailable offence. Once these two conditions are satisfied, an application u/s 438, Cr.PC is maintainable. But I may hasten to add that anticipatory bail cannot be granted as matter of right nor should it be lightly granted. And, in offences like murder, dowry death for example, which are punishable with death or imprisonment for life and for imprisonment which may extend to life, anticipatory bail ought not to be granted unless some very compelling circumstances are made out.

9. A close reading of Sub-section (1) of Section 438, Cr.PC would reveal that the section itself provides a guideline for exercise of powers under this section. The words "if it thinks fit", occurring in this Section, in the opinion of the Court, are important and clearly indicate that the power is to be exercised judiciously and only when the Court is satisfied that the facts and circumstances of the case are such that it would be appropriate and proper for the Court to direct that in the event of arrest, the person be released on bail. This would, I think, be the import of words "a fit case". Therefore, the real test is not an accusation under a particular provision or section, but whether in the opinion of the Court, "it is a fit case" for exercise of powers u/s 438, Cr.PC. Thus, what is required to be seen is not the "Section" under which a particular person is charged but the facts and circumstances involved in the case. In other words, merely because the applicant before the Court is charged with a particular offence, it would not be appropriate for the Court to reject the application solely on that ground. Of course, it is true that the provisions regarding grant of anticipatory bail are to be sparingly used and in exceptional cases and ought not to be used to circumvent the normal procedure and investigation after arrest. Hence, it becomes necessary to

demonstrate that the case and it may also be necessary to demonstrate that the case is false or concocted that the accusation is not from motives for furthering the ends of justice but from some ulterior motive. Thus, the contention that anticipatory bail cannot be granted to an accused in connection with an offence punishable u/s 304B, IPC, cannot be accepted though it would be correct to say that looking to the nature of the offence, the Court ought not grant anticipatory bail in such matters unless a strong prima facie case is made out which would clearly indicate that the charge is false or concocted.

10. At this stage, it would be relevant to refer to a case cited by learned Counsel for the objector, Union of India (UOI) and Others Vs. Arun Kumar Roy, wherein while considering the question of grant of anticipatory bail in a dowry death case, the Apex Court observed that it is not compulsory for the High Court to grant anticipatory bail in such matters. In the said case the Apex Court held thus :--

"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 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."

It was on the basis of aforesaid decision that it was contended by learned Counsel that anticipatory bail in such cases cannot be granted. As has been observed above, this contention cannot be accepted as it would be adding some words to Section 438, Cr.PC though the Legislature has not thought it fit to put any bar in which case an application is maintainable and in which particular case it is not. The authority cited itself lays down that it is not compulsory for High Court to grant anticipatory bail, which clearly indicates that though an application is maintainable, the High Court is not obliged to grant anticipatory bail in a dowry death case. At this stage it would be appropriate to make a reference to a decision of the Apex Court in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, wherein the Constitutional Bench while discussing the scope of Sections 437 and 438, Cr.PC observed thus :--

"14. Generalisations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from

case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, Courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly, these are higher Courts manned by experienced persons, secondly, their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by Courts judicially and not according to whim, caprice or fancy. On the other hand, there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges. Judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges."

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"18. Now Section 438 confers on the High Court and the Court of Session the power to grant anticipatory bail if the applicant has reason to believe that he may be arrested on an accusation of having committed "a non-bailable offence". We see no warrant for reading into this provision the conditions subject to which bail can be granted u/s 437(1) of the Code. That Section, while conferring the power to grant of bail in cases of non-bailable offences, provides by way of an exception that a person accused or suspected of the commission of a non-bailable offence "shall not be so released" if there appears to be reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. If it was intended that the exception contained in Section 437(1) should govern the grant of relief u/s 438(1), nothing would have been easier for the Legislature than to introduce into the latter section a similar provision."

11. A reference was also made to the case of Raghuvir Saran Agarwal Vs. State of U.P. and Others, which was also a case of dowry death in which the order of High Court granting anticipatory bail was set aside. From a perusal of the judgment it is clear that the order was set aside, not because the High Court could not have granted bail but, because it had not, considering the seriousness of the offence, recorded any reasons for exercising the jurisdiction u/s 438, Cr.PC. While considering the matter, the Apex Court held thus :--

"We are surprised, not a little, that anticipatory bail has been granted in a matter where dowry death is alleged to have taken place and the investigation is in progress without assigning any reason whatsoever. If the provision in regard to grant of anticipatory bail is invoked at a stage when the investigation is in progress and the Court is unaware of the seriousness of the matter, it would hamper the investigation itself. In any case, if the High Court felt inclined to grant anticipatory bail, it should have stated the reasons for exercising that jurisdiction. Otherwise every person against whom a first information report is lodged alleging a serious crime will rush to the High Court or the Sessions Court that the case may be considered and obtain anticipatory bail rendering the

provisions of the Criminal Procedure Code in the matter of arrest, etc. redundant. If the High Court is inclined to grant anticipatory bail, it should indicate the reasons why it has exercised power in cases where if the allegations are true, some serious crime could be stated to have been committed. We, therefore, set aside the impugned order of the High Court dated 3-8-1995. We do not think that this is a fit case in which the power for grant of anticipatory bail should be exercised. We think that the High Court should have dismissed the petition and we hereby do so. The appeal will stand disposed of accordingly."

12. With respect to the power to grant anticipatory bail reference may also be made to a decision of the Apex Court in *Balchand Jain v. State of Madhya Pradesh* (AIR 1977 SC 366) wherein it was held that Section 438 of the Code is an extra-ordinary remedy and should be resorted to only in special cases. In Paragraph 2 of the judgment it is observed thus :--

"Now this power of granting "anticipatory bail" is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised. And this power being rather of an unusual nature, it is entrusted only to the higher echelons of judicial service, namely, a Court of Session and the High Court. It is a power exercisable in case of an anticipated accusation of non-bailable offence in respect of which the power can be exercised by the Appropriate Court."

13. Thus, there can be no dispute to the proposition that the power to grant anticipatory bail is not to be exercised by the Court as a matter of course, but has to be exercised sparingly. And, while exercising this power, the Court is also required to see whether refusal of anticipatory bail may result in any wrong or injustice, which it is desirable to avoid. The Court is also required to examine the material available with the Police and to determine if it is "a fit case" in which to exercise its power for granting anticipatory bail. Of course, the limitations placed are always to be kept in mind as the power is to be exercised with due care and circumspection.

14. Now reverting to the facts of the case at hand, it is seen that as per the post-mortem report, Puja died as a result of anti-mortem burns.

On 26-6-2001 at about 6.00 p.m. Smt. Vimla Agrawal informed the Civil Lines Police Station, Raipur that Puja, her daughter-in-law had burnt herself. Ramesh Chand Agarwal, father of Puja admits that Manish, his son-in-law had informed him that Puja had sustained burns (jal gayee hai) and thereafter he again received a telephone message from his son-in-law that Puja is dead. On receiving the intimation family members of Puja had rushed to Raipur. The statements of Ramesh Chand Agarwal and Neeladevi, parents of Puja were recorded on 27-6-2001 which read thus :--

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^^eSa mijks? irs dk fuoklh gwa esjh xqM+k[kw QsDVjh dk O;olk; lEcyiqj esa gS A esjs pkj yM+dh ,oa ,d yM+dk gS A ftlesa e`frdk iwtk vxzoky pkSFks uacj dh Fkh A eSaus viuh yM+dh iwtk vxzoky mez 24 o"kZ dh fookg lkekftd jhfr fjokt ds lkFk y{ehukjk;.k ds iq= euh" k vxzoky mez 27 o"kZ c/o voUrh fogkj dkyksuh] flXyk] jk;iqj ds lkFk fnukad 24-5-2001 dks lEiUu gqvk Fkk A ysu nsu dh ckrsa fdLh izdkj dk dksbZ eq>ls ;k esjs ifjokj okyksa ls ugha gqvk Fkk A "kknh gekjs ifjokj okys rFkk muds ifjokj okyksa ds jkth [kq"kh rFkk yM+dh] yM+dk ds jkth [kq"kh ls gqbZ Fkh A "kknh ds ckn esjs ifjokj ds yksx ;k muds ifjokj ds yksx pwafd 1 ekg djhcu gh gqvk Fkk blfy, vkuk tkuk ugha gqvk Fkk A esjh yM+dh iwtk vxzoky ls esjs ?kj esa izk;% izfrfnu ckrphr eq>s] rFkk ?eka? uhyk nsoh vxzoky ls Hkh ckrphr gksrh Fkh A esjh yM+dh iwtk vxzoky us eq>s ;k esjh ifRu dks ckrphr ds nkSjku fdLh izdkj dk dksbZ leL;k] ekjihV >xM+k yM+kbZ ;k ekuflid ;k vkfFkZd ijs"kkuh ;k vU; izdkj dh dksbZ ckrsa ugha crk;h Fkh vkSj u gh dksbZ i= O;ogkj gh dh Fkh A eq>s fnukad 26&6&2001 ds djhcu 3@20 ,oa 3@30 cts nks ckj euh" k vxzoky dk ?kj esa Qksu vk;k Fkk fd iwtk vxzoky ty x;h gS A rFkk nwljs ckj e`R;q gksuk crk;s A Qksu Hkrhts egs" k vxzoky us lqvk rFkk mlus eq>s crk;k A rFkk xkM+h oxSjg dj mM+hlk lacyiqj ls eSa rFkk esjh ifRu] cMs+ HkkbZ ,oa HkkHkh ?5? O;f? jk;iqj vk;s rFkk jkf= gksus ls jaftr gksVy esa Bgjs gSa A nwljs fnu lqcg ge yksxksa us voUrh fogkj vius le/kh ds ?kj x;s rFkk viuh iq=h e`frdk iwtk vxzoky dk "ko ns[kks rFkk iqfyl ds le{k jk; fn;s e`frdk iwtk tydj e`R;q gksuk yxrk gS A fdl dkj.k ls tydj e`R;q gqbZ gS A bl laca/k esa eSa dqN ugha crk ldrk A**

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^^eSa nykbZ ikjk lacyiqj mM+hlk esa jgrh gwa rFkk ?kj x`gLrh dk dke djrh gwa fd esjs ifr fctuslesu gS esjh yM+dh vxzoky Fkh A ftldh "kknh jk;iqj ds voUrh fogkj dkyksuh esa jgus okys euh" k vxzoky ls 24 ebZ] 2001 dks lkekftd jhfr fjokt vuqlkj "kknh gqbZ Fkh A "kknh esa esjs nkekn i{k ls fdLh izdkj dh ngst dh ekax ugha fd;s Fks A esjh yM+dh ds "kknh ds iwoZ ge yksx yM+dk ns[kus vks;s Fks A iwtk vkSj euh" k dh lgefr ls gh "kknh gqbZ Fkh A "kknh ds ckn Qksu ls esjh yM+dh crkrh Fkh fd lc Bhd gS A dksbZ rdyhQ ugha gksus crkrh Fkh D;k fdLh izdkj dk "kkjhfd vkSj ekuflid izgM ifr }kjk ugha crk;h Fkh A esjh yM+dh iwtk vxzoky llqjky jk;iqj ls fnukad 26&6&2001 ls lqcg lk<s+ 7 cts Qksu dh Fkh A Qksu ls crk;h Fkh fd llqjky esa ets esa gwa rFkk eu ugha yx jgk gS dgdj iwtk cksyh Fkh A lEcyiqj tkus dk eu dj jgk gS dgdj cksy jgh Fkh rks eSa crk;h Fkh fd lkou esa lEcyiqj vkuk dgdj crk;h Fkh A mlds ckn nksigj 3-30 cts jk;iqj ls Qksu feyk euh" k dk A mlesa euh" k crk;k fd iwtk dks vkx yx x;h gS dgdj Qksu ls crk;k Fkk A mlus 15 feuV ckn Qksu euh" k fd;k Fkk fd iwtk ej x;h gS crkus ls lEcyiqj ls jkr ds lkr cts dkj ls jk;iqj vk, vkSj ns[kk fd esjh yM+dh iwtk dk "kjhj tyk Fkk A psgjk de tyk Fkk A ckdh "kjhj rjQ ugha ns[kh gwa A esjs dks tyus dk dksbZ "kadk ugha gS A esjh yM+dh iwtk tyus ls gh ejh gS A fdl dkj.k ls tyh bldh tkudkj ugha gS A

(Emphasis supplied)

15. The police had also recorded the statements of Matadin Agarwal, elder brother of Puja's father and Shyam Sunder Agarwal, Puja's uncle -- brother of Ramesh Chand Agarwal and that of Smt. Ratnadevi w/o Shyam Sunder Agarwal. The relevant extracts are quoted below:

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^^-----"kknh ds le; fdlh izdkj dk ekax iSlk ;k vU; ysu nsu ckcr yM+dk i{k ds lkFk ugha gqbZ Fkh u gh dksbZ ekax fd;s Fks A eSa "kknh esa mifLFkr gqvK gqvK A yM+dh iwtK vxzoky Is yM+dk ilan gS ;k ugha ,slk eq>Is dksbZ ckr ugha gqbZ Fkh A eq>Is Qksu ij ckr ugha gqbZ Fkh A fdUrQ "kknh ds ckn esajh ifRu oxSjg Is kcrsa gqbZ Fkh lHkh Bhd gS A cgqr ets esa gS ,slk crkbZ Fkh A**

Jherh jruh nsoh %

^^&"kknh ds ckn eq>Is Qksu Is 2&3 ckj iwtK vxzoky ?yM+dh? Is ckr gqbZ Fkh A eSa cgqr vPNh gwa A ets esa gS A dgrh Fkh A rFkk "kknh ds igys Hkh rFkk "kknh ds igys Hkh eSa us yM+dh iwtK vxzoky Is iwNh Fkh rks jkth [kq]"kh gksuk "kknh ds fy, rFkk yM+dk Bhd gksuk crk;h Fkh A "kknh ds le; fdlh izdkj dh ngst dh ekax ugha fd;s Fks A rFkk yM+dh us dksbZ ijs"kkuh ugha crk;h Fkh A**

";kelqUnj vxzoky %

^^-----jk;iqj Is lacyiqj iwtK vxzoky }kjk esjh /keZifRu jruh nsoh vxzoky Is ckr Qksu }kjk gksrk Fkk iwtK crkrh Fkh fd llqjky esa dksbZ ijs"kkuh ugha gS lc Bhd gS A

(Emphasis supplied)

16. The police had also recorded the statement of Rajkumar, cousin of Puja, who in fact was instrumental in bringing about the matrimonial alliance. He has stated that he was present when the marriage was settled and at that time there was no talk of any dowry. He has further stated that Puja did not like the face and features of her husband/Manish and time and again he tried to console her that since she is married she should adjust to the situation.

17. The police have also recorded the statement of Vandana, sister of Puja, who has stated that she had met Puja after her marriage, but she had not discussed any problem to her and even when they used to talk over the phone the only thing which Puja said was "Mun nahi lakta" and that she will explain when they meet at Shambalpur. The statement of Raju, husband of Vandana is also on similar lines. The police had also recorded the statement of Dr. Tripti Nagaria to whom Puja had gone for consultation because she was having no seminal discharge. It is stated by Dr. Tripti Nagaria after discussing the problem, she told her that things will become normal in due course.

18. The case diary reveals that subsequently, on 29-6-2001, Ramesh Chand Agarwal, father of Puja had sent a complaint to the Officer-in-Charge, Civil Lines, Raipur that his daughter had been murdered and to shield the offence her body was burnt by her husband and his relatives, and hence an offence u/s 304B of

IPC was registered on 13-10-2001 wherein Shyam Sunder Agarwal, uncle of Puja is shown as the complainant. The statements of Manish, Puja's husband, his parents, his sister and other persons have also been recorded during the course of investigation and all of them have denied that they had demanded any dowry, but the Court is not for the purpose of these proceedings, considering their statements as being favourable to the applicants. It appears that the higher police authorities are also taking note of the investigation. At page Nos. 92,102 and 142 of the case diary it is mentioned that "no positive evidence about any demand of dowry or ill-treatment for want of it has been made out so far".

19. Subsequent to the registration of the offence on 13-10-2001, the police again recorded the statement of Ramesh Chand Agarwal, Puja's father, who has stated that there was a demand of dowry and accordingly. Rs. 4 lakhs in cash and jewellery worth Rs. 2 lakhs was paid. That his daughter was being tortured by her in-laws. He has further stated that his daughter used to complain over the telephone that her in-laws were not satisfied with the dowry as the goods were of an inferior quality and that at least a "TV. and Fridge" ought to have been given. He also stated that his daughter was beaten and ill-treated. In similar lines, is the statement of Puja's mother Neeladevi, which was also recorded on 17-10-2001. Thus, in their subsequent statements Puja's parents state about demand of dowry and ill-treatment of their daughter by her in-laws, which is completely contradictory to their earlier signed statements which were recorded on 27-6-2001 where it was categorically stated that there was no demand of dowry nor was any complaint made after the marriage by Puja. The statement of Ratnidevi w/o Shyam Sunder Agarwal was also recorded on 17-10-2001 where she has, contradicting her earlier statement contained at page 56 of the case diary, stated that after the engagement ceremony there was demand of dowry which was met and after the marriage, Puja's in-laws, her brother-in-law, sister-in-law and husband were troubling Puja, who had burnt herself because of demand of dowry.

Thus, there are two sets of statements on record. In their earlier signed statements Puja's parents, uncle and aunt (reference to which has been made above) clearly stated that there was no demand of dowry nor had Puja ever complained about any demand or ill-treatment but used to say that all is well. However, in their statements after about three months of the unfortunate incident, they have stated that there was demand of dowry and that Puja was being ill-treated and harassed by in-laws, her husband and his family members, that she was murdered and, to hide that act her body was burnt. This aspect was highlighted by the learned Counsel appearing for the State and also the objector but in reply the learned Counsel for the applicants drew the attention of the Court to that portion of post-mortem report where it is mentioned that black soot particles were present in the wind pipe of the deceased. But suffice to say and as is clear from the case diary an offence u/s 304B of Indian Penal Code and not u/s 302, IPC, has been registered against the applicants. This aspect therefore need not be considered any further.

20. At this stage, it will be relevant to mention and to reiterate the fact that anticipatory bail to some extent intrudes in the sphere of investigation of crime and as such the Court must be cautious and circumspect in exercising such power which is of a discretionary nature and, as has been observed above, such a power is not to be exercised lightly. But, at the same time, if the circumstances on record are such which give rise to an inference that the accusation are malafide and appear to be false or groundless, it would not be proper to refuse exercise of powers conferred upon the Court u/s 438 of Cr.PC. Of course, general allegations of malafide or falsity of accusation are not sufficient to invoke this power.

21. Having considered the matter in all its aspects and, considering the fact that immediately after the unfortunate incident all the relatives of the deceased had given signed statements that there was neither any settlement of dowry nor any demand made nor had the deceased ever complained about any ill treatment or torture, the Court is of the opinion that anticipatory bail for a limited period should be granted to the applicants. Accordingly, it is directed that in the event of their arrest, the applicants shall be immediately released on bail subject to the following conditions :--

(i) Each applicant shall furnish a personal bond in the sum of Rs. 30,000/- with two sureties of the like sum to the satisfaction of the concerned police officer arresting them;

(ii) That the applicants shall make themselves available as and when they may be required for the purpose of further interrogation and shall co-operate with the investigating agency;

(iii) That the applicants shall not leave India without prior permission of the Court while they are on bail;

(iv) Within a period of thirty days from the date of their arrest and release on bail pursuant to this order, the applicants shall move an application u/s 439 of Cr.PC for grant of regular bail. If however, they fail to make such an application within the said period of thirty days, the order of anticipatory bail shall become inoperative on the expiry of the said period of thirty days; and

(v) It is further directed that in case an application as directed is filed, the order of anticipatory bail shall remain in force till the disposal of the application u/s 439, Cr.PC. It is however, made clear that in the event, such an application is moved, it shall be considered and disposed of by the Court below on its own merit and the said Court shall in no way be influenced by this order of anticipatory bail.

The applications are allowed to the extent indicated in Paragraph 21 above.