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**(1996) 01 RAJ CK 0007**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Bad Petition No. 135 of 1996

Smt. Bhagwanidevi and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 18-01-1996

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 202, 438, 482  
Penal Code, 1860 (IPC) — Section 306, 396

**Citation :** (1996) 1 RLW 269 : (1996) 1 WLN 56

**Hon'ble Judges :** V.G. Palshikar, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

V.G. Palshikar, J.—This is an application for anticipatory bail u/s 438 of Cr.P.C.

2. The application is opposed apart from the Public Prosecutor, also by Shri Mridul Jain, appearing on behalf of the complainant, who is brother of the deceased-wife.

3. The deceased Santosh was married on 3.12.92 to one Subhash. This Smt. Santosh was reported dead on 23.10.94. It was communicated to her relations that she has met accidental death by falling into the well. One, Satish, her real brother informed the police that the death is not natural and investigation should take place. Accordingly, the police investigated into the allegations and during the course of investigation recorded statements of several persons, Post Mortem was conducted and F.S.L. report was obtained. On consideration of the entire investigation papers, the police came to a conclusion that offence u/s 306 of IPC is made out only against one accused Ram Prashad. A challan, therefore, was filed against that accused. On 28.2.95 cognizance was taken against the accused Ram Prashad u/s 306 of IPC. Thereafter, case was committed for trial and the learned Sessions Judge framed a charge u/s 396 of IPC against the accused Ram Prashad.

4. It will be therefore, seen that the police has chosen to file challan only against one person from the several persons named in the FIR lodged in the police station on telephone by Satish. Satish reached the village Ratan Nagar and lodged a written report with the police that his sister has been tortured to death for dowry by the persons named in the complaint, and therefore, they should be penalised. When the challan was filed against only one person, an application was moved by the complainant Satish seeking action against the alleged persons. However, later on, he withdrew the application and chose to file a fresh and separate complaint before the competent criminal Court against all the present applicants. He, therefore withdrew the prayer made before the Magistrate for taking cognizance.

5. The learned Magistrate before whom the present complaint is filed for recording statements of witnesses u/s 202 of Cr.P.C. came to the conclusion that prima facie case exists against the accused-persons named in the complaint, has taken cognizance against them. The action of the learned Magistrate in taking cognizance is challenged before this Court by a petition u/s 482 of Cr.P.C. That petition is also therefore, decided by this order. Thereafter, the present application for anticipatory bail is moved on the ground that after the cognizance is taken by the learned Magistrate, he is likely to issue warrant of arrest against the petitioners which is not necessary in the facts and circumstances of this case.

6. It is then contended by the learned counsel appealing for the petitioner relying on the several statements recorded by the police that the investigation is already completed and no injury of any kind would be caused to the complainant if these persons are released on bail. The fact that the investigation by the police is complete, is undisputed and challan has already been filed. In so far as the complaint is concerned, cognizance has already been taken. There is therefore no question of any pressure having been brought about in the conduct of the investigation and investigation of the complaint by the applicants.

7. The application is opposed mainly on the ground that the accused persons are responsible for death caused for demand of dowry and therefore, they should not be released on bail. It is also submitted by the learned counsel that the present applicants have not returned the articles of dowry and, therefore, they should not be released on bail.

8. In my opinion, none of these grounds are sufficient to curtail the right of liberty that the individuals have. No injury of any kind would be caused by releasing the applicants on bail in the event of their arrest in the present case. Police has chose to file challan against one accused, who is already been released on bail by this Court in June, 95. The present apprehension therefore is restricted to issuance of a non/bailable warrant by the learned Magistrate, which is sought to be forestalled by this application.

9. Having carefully gone through the facts and circumstances of this case. I am of the opinion that no fruitful purpose will be served by issuing non-bailable

warrants against the accused-persons at this juncture. Learned Magistrate is therefore, directed, to issue only bailable warrants to secure attendance of these persons regularly in the complaint filed by Mr. Satish.

10. Accordingly, the accused-persons if are to be arrested be arrested and released on bail on such sum as the learned Magistrate taking cognizance may deem fit in the facts and circumstances of the case. The application is thus allowed.

11. In the result, the application for bail is allowed. The learned Magistrate shall release the applicants on bail if they appear before him on 26.2.96, on which date the learned Magistrate after taking attendance and security from the applicants shall release them on bail for further appearance.

12. Taking into consideration the circumstances as mentioned above there appears to be no reason to find any default with the order passed by the learned Magistrate taking cognizance of the complaint made by Mr. Satish. I, therefore, see no reason to interfere u/s 482 of Cr.P.C. with the order taking cognizance passed by the learned Magistrate.

13. In the result, the application u/s 482 fails and is dismissed.