

(2025) 01 KAR CK 1646

In the Karnataka High Court, Dharwad Bench

Case No : Criminal Petition No. 103504 Of 2024 [438(Cr.PC)/482(BNSS)]

Zarina W/O Riyazahmed Basrikati

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 24-01-2025

Acts Referred:

Citation : (2025) 01 KAR CK 1646

Hon'ble Judges : Krishna S Dixit, J;G Basavaraja, J

Bench : Single Bench

Advocate : Rajesha Shettigara, Aditya Vikram Bhat

Final Decision : Disposed Of

Judgement

Ravi V. Hosmani, J

1. This petition is filed by accused no.2 (petitioner) under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short) for grant of anticipatory bail in Crime no.130/2024 of Nandgad Police Station for offences punishable under Sections 80, 85, 115 (2), 126 (2), 103 (1), 351 (2) read with Section 3 (5) of Bharatiya Nyaya Sanhita, 2023 ('BNS', for short) and Sections 3 and 4 of Dowry Prohibition Act, 1961 ('DP Act' for short).

2. Sri AA Pathan, learned counsel for petitioner submitted, petitioner was 62 years of age, a homemaker, a law abiding citizen and permanent resident of Nandgad village residing there with her husband - accused no.3 and her son - accused no.1. It was submitted, that she was suffering from acute arthritis. And though, she had not committed any offences, she was apprehending arrest on basis of false complaint filed by Abdulrahim Rajesab Honnapur (Complainant), on 27.09.2024 stating that about four months earlier, Mudassar Basarikatti (accused no.1) had sought marriage alliance with his daughter Arsha Ahmadi (victim). As same was acceptable to both families, their marriage was solemnized on 09.06.2024. At that time victim was given 1½ tolas of gold. But eight days after marriage, accused no.1 began teasing her by stating that she was not from

affluent family and had not got either five lakhs worth gold, refrigerator, washing machine, etc., which she informed complainant when she came home. She was sent back after advising. But, one month thereafter, when she came back again, she told about petitioner body shaming her etc. Once again after consoling her she was sent back. Complainant along with his wife and children went to house of accused and advised them to take good care of victim which they had agreed. But on 25.09.2024, petitioner called complainant to advise victim again. When they met victim, she told him that accused had not allowed her to speak with her parents and prevented her from going to them by stating that she would be allowed only after arranging for Five Lakhs rupees. And at 9:00 p.m. on Monday, when she was sleeping accused came together and forced her to drink some medicine despite her refusal. Complainant had at that time consoled her that same may be for her benefit. Thereafter, he came back by leaving his wife to take care of victim. But, later his wife called him stating that victim had not recovered. When he went back with his children, they found that she had been made to drink pesticide. When they intended to take her to hospital, accused no.1 had demanded them to pay Rs.5 lakhs first and thereafter take her to hospital. Only after village elders assembled and advised, victim was permitted to be taken to Venugrama hospital at Belagavi. While under treatment, victim had told complainant about accused beating her and by stating that she was from a poor family and a burden to them forcibly made her consume pesticide, with intention to kill her and thereafter, locked her up in a room. Based on said complaint, Crime no.130/2024 was registered for non-bailable offences as stated above.

3. It was submitted, accused no.1 was arrested on 28.09.2024. It was submitted, application for anticipatory bail was filed before filing of charge-sheet. Prosecution had in meanwhile completed investigation and filed charge-sheet on 23.12.2024. It was submitted, during her admission at Venugrama hospital, victim was certified on 26.09.2024, as not fit to give her statement. It was submitted, similar endorsement was made on 27.09.2024, 28.09.2024 and 29.09.2024. It was submitted, when Investigating Officer ('IO') had requested Tahasildar and Taluka Magistrate to record her dying declaration, he had refused by referring to doctor's certificate. Contrary to above endorsements, it was thereafter stated that victim had given statement in writing on 27.09.2024 implicating accused for forcing her to drink pesticide.

4. Apart from above, statement of CW-10 – Dr.Madhukar Patil recorded on 02.10.2024 was that on 25.09.2024 petitioner had taken victim for treatment at 4:30 p.m. by claiming that she was suffering from vomiting, dysentery and urination. Therefore, he had administered saline solution. But, at 7:30 p.m., he came to know that she had consumed poison and therefore sent for treatment to Venugrama hospital. It was pointed out that CW-10 had stated about victim consuming poison.

5. It was submitted, in statement recorded under Section 183 of BNSS on

12.11.2024, complainant had sought to improvise by stating, while under treatment at Hospital, victim had held her Thali and told him not to spare her husband.

6. Learned counsel further drew attention to contents of complaint wherein it was stated "after discussion, complaint was filed", to contend that there was ample scope for improvisation. It was submitted, complaint averments in any case fell short of substantiating ingredients of Section 80 of BNS. It was submitted, rejection of bail petition by learned District Judge was solely on ground that petitioner may hamper investigation. Since charge-sheet was filed, said apprehension did not survive. In support of his submissions, learned counsel relied upon decision of Hon'ble Supreme Court in case of Asha Dubey v. State of Madhya Pradesh, (Crl.A.no.4564/2024 disposed of on 12.11.2024) wherein, under similar circumstances on arrest of husband of deceased, anticipatory bail was granted to mother-in-law of deceased, on conditions. On above grounds sought for grant of bail on any conditions

7. On other hand, Sri Jairam Siddi, learned HCGP for respondent – State opposed petition. At outset, it was submitted offence alleged against petitioner were heinous. It was submitted, death of victim was within four months of marriage, while under treatment for forcible consumption of pesticide. It was submitted, allegations in complaint were against all accused and substantiating offence of murder punishable with death or imprisonment of life. Moreover, victim had given dying declaration in writing and same was attested by doctor, clearly implicating accused, including petitioner. Said declaration contained averment of specific overt act by petitioner herein that she had mixed poison in water and made victim drink it and thereafter confined her in a room.

8. It was submitted, investigation was already completed and charge-sheet filed after finding sufficient incriminating material against accused. Learned HCGP further pointed out to statement of complainant in complaint as well as in statement recorded under Section 183 of BNSS to effect that accused had refused victim to avail treatment until payment of Rupees Five Lakhs and thereby contributed to her death by delaying treatment. It was submitted, in case of grant of bail, petitioner was in all likelihood to tamper prosecution witnesses or flee away. Above circumstances fully justified denial of bail to petitioner.

9. Heard learned counsel and perused material on record.

10. Thus point that arises for consideration is:

"Whether petitioner is entitled for anticipatory bail on conditions?"

11. This petition is by accused no.2 seeking for anticipatory bail in Crime no.130/2024 of Nandgad Police Station for offences punishable under Sections 80, 85, 115 (2), 126 (2), 103 (1), 351 (2) read with Section 3 (5) of BNS and Sections 3 and 4 of DP Act.

12. From above, it is seen petitioner's application for anticipatory bail stems from

apprehension about imminent arrest in view of registration of Crime no.130/2024 (supra) for non-bailable offences alleged to have been committed by petitioner along with other accused. Therefore requirement of reasonable basis for apprehension for anticipatory bail is satisfied.

13. Prosecution material reveals that accused are alleged to have committed murder of victim by making her to drink pesticide and thereafter confining her in a room and preventing her from availing help/treatment. Therefore, nature of offences alleged are grave and serious. Admittedly, death of victim has occurred within four months of marriage due to unnatural causes, while she was in her matrimonial home (although actual death was in hospital). Death Summary issued by Venugrama Hospital indicates cause of death as due to "paraquat poisoning with hepato-renal failure", which would be unnatural.

14. When there are clear averments in complaint/statements prima facie substantiating necessary ingredients for commission of offences alleged, discrepancies and inconsistencies sought to be pointed out do not conclusively rule out any involvement of petitioner or render offences alleged without any basis. Prima facie, material would also indicate, even if as sought to be contended that victim had consumed pesticide/poison herself, her death appears due to failure to avail timely and proper treatment.

15. Moreover insofar as discrepancies and inconsistencies in prosecution material sought to be highlighted by learned counsel for petitioner, question that arises would be whether this is appropriate stage for consideration. Especially, when in meanwhile prosecution has completed investigation and filed Charge sheet. Indeed, there is no denying that petitioner is a woman aged 65 years without any criminal antecedents, but prima facie nature of offences alleged and prosecution material does not indicate that petitioner was arraigned only for purposes of harming her reputation or causing her harm, especially as all accused were residing together with victim.

16. High Court of Delhi in case of Sushma v. State (NCT of Delhi), reported in 2024 SCC OnLine Del 6750 has held as follows under similar circumstances:

"10. The learned counsel for the applicant submits that the applicant along with her husband was residing on the first floor of the house while the rest of the family including the deceased resided on the second floor of the house.

11. He submits that the applicant, being a senior citizen aged 60 years, is suffering from various old age diseases including acute arthritis in her knees. He submits that it is very difficult for her to climb stairs to the second floor of the house and had no concern in the day today personal affairs of the deceased and his son.

12. He submits that the sister-in-law and brother-in-law of the victim have already been granted pre-arrest bail by the learned Trial Court vide order dated 21.06.2024 wherein it was noted that no specific allegations of demand of dowry

or causing harassment to the deceased had been levelled against them.

13. The learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that specific allegations have been levelled against the applicant whereby he cannot claim parity with the co-accused persons who have been granted pre-arrest bail.

14. He submits that the PCR call regarding the death of the victim was made by her friend who had informed that the victim had died an unnatural death. He submits that the accused persons made no attempt to intimate the police authority on their own.

15. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation has been carried out by the investigating agency.

16. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, advertent to its previous precedents, has discussed the parameters to be considered while considering pre-arrest bail applications, in the case of *State of A.P. v. Bimal Krishna Kundu*, (1997) 8 SCC 104, has held as under:

"8. A three-Judge Bench of this Court has stated in *Pokar Ram v. State of Rajasthan* [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal."

9. Similar observations have been made by us in a recent judgment in *State v. Anil Sharma* [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

"The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest."

xxxx xxxx xxxx

12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no

doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order."

17. This Court, while dismissing the bail application of the applicant's husband, who is a co-accused in the present case, observed that the victim died under unnatural circumstances within three years of her marriage to the applicant's son. This fact raises a statutory presumption under Section 113B of the Indian Evidence Act, 1872. Furthermore, the applicant has been specifically accused of harassing the deceased soon after her marriage, allegedly in connection with dowry demands, which eventually led to her tragic death.

18. This Court relied upon the judgment passed by the Hon'ble Apex Court in the case of *Samunder Singh v. State of Rajasthan*, (1987) 1 SCC 466, wherein it was held that in cases involving dowry death, the High Court should exercise caution and refrain from granting pre-arrest bail, given the gravity and seriousness of such offences.

19. It was further noted by this Court that, although there was a delay in the statement regarding the cruelty inflicted upon the deceased, such delay cannot, at this stage, be considered detrimental to the prosecution's case. The merit of this aspect will be evaluated during the trial, and it does not warrant the granting of pre-arrest bail at this juncture.

20. It cannot be held, at this stage, that the investigation is being carried out with the intention to injure or humiliate the applicants. The nature and the gravity of the allegations are serious. It is settled law that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [*Ref. State v. Anil Sharma*, (1997) 7 SCC 187].

21. The investigating agency needs to be given a fair play in the joints to investigate the matter in the manner they feel appropriate.

22. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. It plays a crucial tool in preventing harassment and unjust detention of innocent persons. However, the court must carefully balance the individual's right to liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence, its societal impact, and the need for a comprehensive and

unobstructed investigation.

23. While the benefit of proviso to Section 437 of the CrPC, which allows for leniency in granting bail to a woman, sick, or infirm, is recognized under certain circumstances, this benefit cannot be extended at the stage of pre-arrest bail. The applicant is accused of having a role similar to that of her husband/co-accused, whose pre-arrest bail has already been dismissed by the Hon'ble Apex Court.

24. Even otherwise, the protection under Section 437 of the CrPC is not absolute and is subject to the nature and gravity of the offence. In this case, where the applicant is alleged to be directly involved in the incessant demands of dowry and harassment of the deceased, the mere fact of being an elderly woman or infirm does not automatically entitle her to pre-arrest bail. The allegations must be scrutinized based on the merits of the case, and the severity of the crime takes precedence over any personal exemptions under Section 437 of the CrPC.

25. In view of the above, in the present circumstances, this Court is of the opinion that custodial interrogation of the applicants ought not to be denied to the investigating authority.

26. Considering the aforesaid discussion, this Court is of the opinion that the applicant has not made out a prima facie case for grant of pre-arrest bail.

27. The present application is accordingly dismissed.”

17. Applying ratio and taking note of seriousness of offences alleged, point for consideration is answered in negative.

18. Consequently, following:

ORDER

Petition is rejected.