

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND**

THE HON'BLE SRI JUSTICE B. KRISHNA MOHAN

I.A. No. 2 of 2020

In

Criminal Appeal No. 147 of 2020

Order: *(Per Hon'ble Sri Justice C.Praveen Kumar)*

Heard Sri. Kolla Venkateswarlu, learned Counsel appearing for the Appellant/Accused No.1 and Sri. S.Dushyanth Reddy, Additional Public Prosecutor for the State, through Blue Jeans video conferencing APP and with their consent, the application is disposed of.

1) The present application came to be filed by A1 seeking bail on the ground that there is absolutely no evidence on record to connect the accused with the crime. The learned Counsel took us through the evidence to show that A1 is innocent of the offences alleged against him.

2) As seen from the record, originally seven accused were tried in Sessions Case No. 160 of 2016 for the offences punishable under Sections 498-A and 302 read with 34 and 201 I.P.C. By its Judgment, dated 27.12.2019, the learned Sessions Judge, convicted A1 to A5 for the offence punishable under Section 498A I.P.C. and sentenced each of them to suffer rigorous imprisonment for a period of three years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for two

months; A1 and A7 were convicted for the offence punishable under Section 302 read with 34 I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for two months; the accused were also convicted for the offence punishable under Section 201 I.P.C. and each of them was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for two months.

3) The facts, in issue, as per the averments in the charge-sheet, are as under:

a) Muddana Krishna Kumari [**'deceased'**] was given in marriage to A1 about 15 years prior to the date of incident. They were blessed with a daughter, by name, Tanuja, who was examined as PW4. In the year 2000, the deceased and A1 worked in Vahini Stores belonging to PW5 and one Satyanarayana. They lived in Hyderabad for two years and, thereafter, moved to Nadikudi Village to start their own business. It is said that, PW5 and Satyanarayana gave Rs.1,00,000/- to the deceased and her husband [A1] and sent them to Nadikudi Village, where A1 joined in a FCI Godown at Gamaladu Village. Subsequently, A1 is said to have developed illicit contact with Nagaraja Kumari [A7] of Palaparthi Village and since then he used to come home late in a drunken condition and beat the deceased. The

acts of harassment were informed by the deceased to the relatives and other friends.

b) One day, A1 beat the deceased and demanded that he would bring A7 to the house and further directed the deceased go to her parent's house and bring additional dowry. On seeing the same, PW4 – Tanuja informed one Mandapati Srinivasa Rao, Advocate [PW13]. Immediately, PW13 telephoned to PW2 and asked them to take back the deceased, as A1 was harassing the deceased mentally and physically without any reason. Then, PW2 came to the house of the deceased at Nadikudi and requested A1 not to harass the deceased. However, PW2 took the deceased and PW4 to her house, kept them for 10 days and later sent them back to the house of A1. But, there was no change in the attitude of the accused.

c) On 23.02.2014 at about 3:00 hours PW2 made a call to the deceased, and noticed the deceased talking in a low voice and that her conversation in phone was not normal. On enquiry, it was informed that A1 went to Srisailam and that she will call later. On the same day at about 21:30 hours, PW4 made a call to PW5 stating that the deceased was missing. Immediately, PW5 called A1 and enquired about the deceased, but there was no reply. On the same day night at about 11.00 P.M., Satyanarayana also made telephonic calls to A1 and asked him to give a report to

police about missing of the deceased, but A1 failed to do so.

d) On 24.02.2014, when PW2 called the deceased on phone, PW4 answered her call and informed that A1 asked her not to reveal to anybody about the missing of the deceased and, accordingly, put off the phone. Thereafter, a news item appeared about a dead body lying in a quarry, which lead to setting the law into motion. This in substance is the case of the prosecution.

4) In support of its case, the prosecution examined PW1 to PW18 and got marked Ex.P1 to Ex.P33, beside marking M.O.1 to M.O.4.

5) The main argument advanced by Sri. Kolla Venkateswarlu, learned Counsel appearing for the Appellant/Accused No.1 is that even accepting the entire case of the prosecution to be true, no offence under Section 302 I.P.C., is made out against the Petitioner as the case rests on circumstantial evidence and the circumstances so relied upon do not form a chain of events connecting the accused with the crime.

6) Sri. S. Dushyanth Reddy, the learned Additional Public Prosecutor opposed the same contending that hearing of a bail application pending disposal of the appeal amounts to hearing of the appeal itself and the practice of hearing a bail applications pending appeal was commented upon by the Hon'ble Supreme

Court in ***Kashmira Singh v. The State Of Punjab***¹ case and also in ***Preet Pal Singh v. State of Uttar Pradesh and Another***².

7) In ***Preet Pal Singh's*** case, [cited 2nd supra], the Hon'ble Supreme Court in paragraph no. 24 framed an issue as to whether "*the High Court was justified in directing release of the Respondent No.2 on bail, during the pendency of appeal before the High Court*". In paragraph no. 26 of the said judgment, the court held as under:

*"As the discretion under Section 389(1) is to be exercised judicially, the Appellate Court is obliged to consider whether any cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and whether there is likelihood of unreasonable delay in disposal of the appeal, as held by this Court in **Kashmira Singh v. State of Punjab** and **Babu Singh and Ors. v. State of U.P.**"*

8) In paragraph 35, the Hon'ble Supreme Court held as under:

*"There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in **Dataram Singh v. State of U.P. and Anr**³. However, in*

¹ (1977) 4 SCC 291

² (2020) 7 Supreme Court Cases 645

³ (2018) 3 SCC 22

case of post conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C.”

9) Similarly, in paragraph no. 38 and 40, the Hon’ble Supreme Court held as under:

“38. In considering an application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction prima facie erroneous. Where there is evidence that has been considered by the Trial Court, it is not open to a Court considering application under Section 389 to re-assess and/or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail.

40. It is difficult to appreciate how the High Court could casually have suspended the execution of the sentence and granted bail to the Respondent No.2 without recording any reasons, with the casual observation of force in the argument made on behalf of the Appellant before the High Court, that is, the Respondent No.2 herein. In effect, at the stage of an application under Section 389 of the CrPC, the High Court found merit in the submission that the brother of the victim not having been examined, the contention of the Respondent No.2, being the Appellant before the High Court, that the amount of Rs.2,50,000/- was taken as a loan was not refuted, ignoring the evidence relied upon by the Sessions Court, including the oral evidence of the victim’s parents.”

10) Keeping in view the broad principles laid down by the Hon'ble Supreme Court, it is now to be seen *whether the petitioner is entitled for bail.*

11) It is to be noted here that, on appreciation of the evidence available on record, the trial court convicted A1 [petitioner] and A7 and sentenced each one of them to suffer imprisonment for life. Challenging the same, an appeal came to be preferred in the year 2020.

12) Before proceeding further, it is to be noted that A1 [petitioner] earlier moved an application for bail before this court in I.A. No. 1 of 2020. By an Order, dated 04.03.2020, this court dismissed the bail application holding as under:

"The petitioner/appellant was the husband of the deceased. Learned counsel for the petitioner/appellant further submitted that initially no opinion from the Doctor regarding the death was obtained. However, at a belated stage, opinion of the doctor was received suggesting that it was a case of throttling. However, learned counsel for the petitioner/appellant did not dispute that the deceased, being wife of the petitioner/appellant, was residing with him as well as their daughter and her death, which was not natural has occurred while she was with her husband i.e., the petitioner/appellant.

On going through the judgment impugned, prima facie, we do not find perversity warranting interference and passing any favourable order."

13) The said order has become final, as the same was not challenged before the Hon'ble Supreme Court.

14) Coming to the merits of the case, PW4 who is the daughter of the deceased and A1 categorically deposed about the illicit intimacy between A1 and A7 and the harassment by A1 in insisting the deceased to accept A7 to reside along with him. Further, PW4 in her evidence deposed about the conduct of A1 in returning home and beating the deceased, demanding the deceased to bring money etc. She further deposed that on 23.02.2014 in the morning, A7 came to the house, spoke with the deceased and left the house. In the afternoon, the deceased served food to PW4 and A1 and, thereafter, A1 sent PW4 out of the house on the pretext of getting mehendi from the house of one Madhuri. PW4 returned home by 5.30 P.M., by which time a car was stationed outside the house. When PW4 enquired A1 about the deceased, A1 stated that deceased will return home and not to inform anybody or make any enquiries about her mother. When PW4 was about to make a phone call to PW2, A1 forcibly took the phone and brought her to Gurazala. On the way to Gurazala, A1 informed PW4 that her mother is no more. After reaching Gurazala, A4 and A3 asked PW4 not to inform police or anybody since the deceased is no more and also threatened PW4 with dire consequences if she goes to the house of PW2 after they reach Gurazala.

15) After reaching Gurazala, PW4 observed the dead body of her mother and raised a suspicion against A1 in killing the deceased, so as to continue his illegal intimacy with A7.

16) PW5 who is the sister of the deceased also deposed about the illicit intimacy of A1 with A7 and along with A1, A2 to A5 pressurizing the deceased to accept A7 to reside along with them. She also deposed about the harassment caused to the deceased in that regard.

17) From a perusal of the evidence on record, it is clear that A1, who is the husband of the deceased, harassed the deceased not only for dowry but wanted the deceased to accept A7 to live with them.

18) Apart from the evidence of PW4, the evidence of PW8 – Village Revenue Officer, Pedagarlapadu Village, assumes lot of importance. According to him, on 20.07.2015, A1 came to him while he was in Mandal Revenue Office, Dachepalli, and confessed about the commission of the offence. He also confessed about his illicit intimacy with the petitioner/A7 and beating the deceased with the stick leading to her death. The said statement was reduced into writing vide Ex.P7, and, thereafter, the signature of A1 was taken on the said statement. PW8 took A1 along with the statement [Ex.P7] to the police station and handed over the statement, his report and the accused to police.

19) It has been held by the Hon'ble Supreme Court in ***Siva Kumar v. State By Inspector of Police***⁴, that extra-judicial confession made before the Village Revenue Officer is acceptable in evidence, provided the same inspires confidence. It is no doubt true that that the extra-judicial confession is weak piece of evidence, but if it is credible, can be taken as one of the circumstance in the chain of events.

20) The evidence of PW2, who is mother of the deceased, also establish the illicit intimacy between A1 and A7. According to her, A7 used to visit the house of A1 frequently and on one occasion when PW2 was present at Narayanapuram Village, A7 beat the deceased, which act was encouraged by A1. Therefore, at this stage, it cannot be said that the finding given by the trial court showing the complexity of the accused in the commission of the offence, is perverse or that there was patent infirmity in the order of conviction making the order *prima facie* erroneous. Only after appreciation of the entire evidence on record, the court has come to a conclusion with regard to the involvement of the accused in the crime and in the absence of any changed circumstances, we are of the view that it is not a case to grant bail.

⁴ (2006) 1 Supreme Court Cases 714; (2006) 1 Supreme Court Cases (Cri) 470

21) Accordingly, the I.A. is ***dismissed***. However, the Registry to comply with the order passed earlier in listing the matter for final hearing after Dussehra Vacation 2021 if booklet is ready.

JUSTICE C. PRAVEEN KUMAR

JUSTICE B. KRISHNA MOHAN

Date: 21/09/2021
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