

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WEDNESDAY, THE THIRD DAY OF OCTOBER
TWO THOUSAND AND EIGHTEEN

**:PRESENT:
THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**IA No. 3 OF 2018
IN
CRLA NO: 2229 OF 2018**

Between:

1. Kailash Kawer, S/o.Late Rathan Singh
2. Rajendra Singh, S/o.Late Rathan Singh

...Appellants/Accused No.1&2
(Appellant in CRLA.No.2229 OF 2018
on the file of High Court)

AND

The State of Andhra Pradesh, rep. by the Public Prosecutor, High Court of Judicature at Hyderabad for the state of Telangana and the state of Andhra Pradesh.

...Respondent/Complainant
(Respondents in-do-)

**Counsel for the Petitioners : SMT.C.VASUNDHARA REDDY
Counsel for the Respondent: PUBLIC PROSECUTOR (TG)**

Petition under Section 389(1) Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the execution of the sentence in SC.No. 480 of 2014 on the file of the VIII Additional District and Sessions Judge, Rangareddy District at LB.Nagar and release the petitioners/accused No.1 & 2 on bail in Criminal Appeal No. 2229 of 2018, pending before this Hon'ble Court, Pending disposal of CRLA No.2229 of 2018, on the file of the High Court.

The Court made the following

ORDER:

This application is filed seeking to release the petitioners - A1 and A2 on bail by suspending the execution of sentence imposed on them vide judgment dated 02.11.2017 in S.C.No. 480 of 2014 delivered by VIII Additional District & Sessions Judge, L.B.Nagar, Hyderabad.

The learned counsel for the petitioners submits that there are two dying declarations. The first dying declaration was recorded by PW7 - Head Constable of Police on 24.01.2014 at 07:00 P.M. which is marked as Ex.P12, wherein it is stated by the deceased that at the time of her marriage with A2, her parents gave dowry of Rs.1.00 lakhs, 20 tulas of gold and household articles, and after the marriage, as the gold is with her parents, her husband was constantly beating her in demand of

money, and her mother-in-law - A1 chastised and harassed her. On 24.01.2014, at about 01:00 p.m., her husband left the house after quarreling with her, and due to anger, the deceased poured kerosene which was available at house, and set herself ablaze, and ran into bathroom and poured water on herself.

In the second dying declaration of the deceased recorded by PW9 - IX Additional Chief Metropolitan Magistrate, Hyderabad which is marked as Ex.P15, the deceased stated that on 24.01.2014, petrol was available in the kitchen, and at about 01:00 p.m., when she went to bathroom, her mother-in-law came from behind and poured petrol on her and set her ablaze and her husband - A2 was not present in the house at that time.

The learned counsel for the petitioners further submits that the trial Court has not relied upon the dying declarations and acquitted A1 of the offence punishable under Section 302 IPC, however convicted the petitioners - A1 and A2 of the offence punishable under Section 304 - B IPC and sentenced them to undergo rigorous imprisonment for life.

She further submits that the present case does not fall under the category of rarest of rare cases as decided by the Supreme Court in the case of **Hari Om v. State of Haryana and Another** reported in [(2014) 10 SCC 577)].

She further submits that even as per Section 304-B IPC, whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years, but which may extend up to imprisonment for life. Thus, in the present case, the learned trial Court would not have imposed sentence of life imprisonment for the reason that the maximum sentence would have been seven years or up to the maximum of 10 years.

The learned counsel for the petitioners also submits that in addition to the above, no quarrel took place immediately preceding the death of the deceased, therefore, the petitioners would have been convicted only of the offence punishable under Section 306 IPC instead of 304-B IPC.

The learned Additional Public Prosecutor appearing on behalf of the respondent-State submits that the petitioners have been demanding extra amount towards dowry, and on the date of the incident i.e.

24.01.2014, the husband - A2 had a quarrel with the deceased, and thereafter, she committed suicide by pouring kerosene oil. The marriage of A2 with the deceased took place on 02.12.2007 and the alleged incident occurred on 24.01.2014 i.e. within seven years after the marriage and the deceased died under suspicious circumstances. Therefore, the trial Court has rightly convicted the petitioners of the offence punishable under Section 304-B IPC, and in the circumstances, the petitioners are not entitled to bail.

It is not in dispute that there are two dying declarations of the deceased recorded by PWs.7 and 9 respectively. In the first declaration, the deceased deposed that she herself poured kerosene which was available at her house and set herself ablaze, whereas, in the second declaration, she deposed that her mother-in-law - A1 came from behind and poured petrol on her and set ablaze. In both the statements, the deceased stated that her husband - A2 was not at home at the time of occurrence of offence.

These dying declarations establish that the petitioners had been harassing the deceased for additional dowry, and on the date of the incident i.e. 24.01.2014, her husband-A2, after quarrelling with the deceased, left the house.

It is not in dispute that the trial Court has not convicted the petitioners of the offence punishable under Section 302 IPC, however it has convicted them under Section 304-B IPC.

In paragraph No.7 of the above-referred judgment of the Apex Court, it is observed that if the trial Court is of the opinion that the accused is guilty of the offence punishable under 304-B IPC then the sentence should not be less than seven years and that maximum punishment of life term should be awarded in rarest of rare cases, but not in other cases.

Without commenting on the merits whether the present case falls under the category of rarest of rare cases or not, we are of the considered opinion that the petitioners - A1 and A2 are entitled to bail.

Hence, we hereby suspend the sentence awarded by the trial Court and direct the trial Court to release the petitioners - A1 and A2 on bail subject to the condition that they shall execute personal bond for a

sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with two sureties for a like sum each to its satisfaction.

Accordingly, this application is ordered.

Sd/- CH.VENKATESHWAR
ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To

1. The VIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar
2. The III Metropolitan Magistrate Cyberabad at L.B.Nagar, R.R.District
3. The Station House Officer, Uppal Police Station, R.R.District
4. One CC to SMT.C VASUNDHARA REDDY Advocate [OPUC]
5. Two CCs PUBLIC PROSECUTOR (TG) High Court of Judicature at Hyderabad (OUT)
6. One spare copy

HIGH COURT

SKK,J & TA,J

DATED: 03.10.2018

I.A.NO. 3 OF 2018
IN
CRL.A.NO.2229 OF 2018

BAIL



A large, stylized handwritten mark or signature in black ink, located below the circular stamp.