

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 1049 of 2024
With
I.A. No. 9306 of 2025

Mithilesh Kumhar @ Mithilesh Pandit, aged about 24 years, s/o Sri Dulal Kumhar, R/o Narkopi, P.O. & P.S. Topchanchi, District-Dhanbad.

... .. Appellant

Versus

The State of Jharkhand

... .. Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Shailesh Kr. Singh, Advocate
For the Respondent : Mr. Satish Prasad, A.P.P.

CAV/Reserved on 13.11.2025

Pronounced on 28/11/2025

Per Sujit Narayan Prasad, J.

I.A. No. 9306 of 2025:

1. The instant interlocutory application, under Section 389(1) of the Code of Criminal Procedure, has been filed on behalf of applicant for suspension of sentence in connection with the Judgment of conviction dated 22.07.2024 and order of sentence dated 24.07.2024 passed by the learned Additional Sessions Judge-VII-cum-FTC(CAW),Dhanbad, in Sessions Trial No.751 of 2023, in connection with Topchanchi P.S. Case No. 82 of 2023, whereby and whereunder, the applicant has been convicted and sentenced to undergo R.I. for ten years for the offence under Section 304B of IPC.

Factual Matrix:

2. The prosecution story, in brief, requires to be referred herein which read as under:

The informant has given written report before O/c, Topchanchi P.S. alleging therein that on 09.12.2022, Mithilesh Kumhar induced and trapped her daughter Priya Kumari into love and solemnized inter-caste marriage with her. It is further alleged that after marriage, Mithilesh Kumhar, his father Dulal Kumhar, mother Indiya Devi, brother Ranjit Kumar and sister started

demanding dowry of Rs. 5 lacs and on non-fulfillment of demand she was subjected to mental and physical torture.

On 01.06.2023 at 02:00 p.m. the accused persons including the applicant herein, killed her by tying rope in her neck/ strangulation.

3. On the basis of written report of the informant, Topchanchi P.S. Case No. 82/2023 was registered against Mithilesh Kumhar, Dulal Kumhar, Indiya Devi, Ranjeet Kumhar and Sunita u/s 304-B/34 of the IPC on 01.06.2023. After completion of investigation, I.O. of the case submitted charge-sheet against Mithilesh Kumhar @ Mithilesh Pandit u/s 304-B/34 of the IPC by keeping the investigation pending against rest accused persons.
4. Accordingly, the trial proceeded and the present applicant was found guilty by the learned trial court and accordingly, has been convicted and sentenced to undergo R.I. for ten years for the offence under Section 304B of IPC.
5. The present application has been filed on behalf of applicant for suspension of sentence during pendency of the appeal.

Submission on behalf of the Applicant:

6. Mr. Shailesh Kr. Singh, learned counsel for the applicant, at the outset, has submitted that earlier interlocutory application being I.A. No. 9926 of 2024 was filed by the present applicant/appellant for suspension of sentence but vide order dated 18.02.2025 the said I.A. had been dismissed as not pressed.
7. Thereafter, the present interlocutory application has been filed on behalf of applicant renewing the prayer for suspension of sentence on the ground that the judgment of conviction is without considering the facts and circumstances of the case as the applicant is innocent and has falsely been implicated in this case.
8. It has been submitted by the learned counsel for the applicant that although the charge has been framed under Section 304-B/34 of IPC but it is not found in the entire evidence that the deceased was

subjected to cruelty or harassment by the appellant soon before her death.

9. It has also been submitted that Section 34 of IPC has been added without taking into consideration that the prosecution did not find any sufficient evidence to put any other relative on trial and it is the applicant who alone faced the trial.
10. It has also been submitted that the learned trial court has also failed to appreciate the conduct of the applicant that after his wife committed suicide, he was present in the house and did not try to flee away rather he was arrested by the police from the house itself.
11. It has also been submitted that the learned trial court has failed to take into consideration that no complaint was lodged regarding the demand of dowry by the applicant, as such, the allegation as has been levelled against the applicant, is completely false.
12. Learned counsel, apart from these grounds, has prayed for suspension of sentence on the ground that applicant is suffering from HIV(AIDS) and for this learned counsel has referred to medical report Annexure-1 of the applicant.
13. Learned counsel for the applicant, on the aforesaid premise, has submitted that, therefore, it is a fit case for suspension of sentence so that the applicant be released from judicial custody.

Submission on behalf of the Respondent:

14. While on the other hand, Mr. Satish Prasad, learned Additional Public Prosecutor appearing for the respondent-State has vehemently opposed the prayer for suspension of sentence.
15. It has been submitted that the informant Sanoj Rawani, is the father of the deceased, who has been examined as PW.7, has corroborated his first version made in written report and has stated in his testimony that after marriage of her daughter, applicant had started demanding Rs. 5 lakh as dowry and when the demand was not fulfilled applicant started torturing her and ultimately the accused

person/applicant committed murder of her daughter just within few months of her marriage.

16. It has also been submitted that the doctor has been examined as PW-8, who has proved postmortem report, which has been marked as Ext.-P-3/PW.8. According to postmortem report and the statement of doctor, the death of deceased was due to asphyxia as a result of hanging and he has also stated about the possibility of homicide.
17. Learned counsel for the respondent/state, on the aforesaid premise, has submitted that alleged offence fully made out against the applicant and therefore, it is not a fit case for suspension of sentence, as such, the present interlocutory application may be rejected.

Analysis:

18. We have heard the learned counsel for the parties and appreciated the submission made on behalf of both the parties as also gone through the trial court record.
19. It is evident that earlier the prayer for suspension of sentence of the present applicant had been dismissed as not pressed by this Court vide order dated 18.02.2025 passed in I.A. No. 9926 of 2024. Thereafter, the present interlocutory application has been filed renewing the prayer for suspension of sentence during pendency of the appeal.
20. Before adverting to the facts of the instant case, it needs to refer herein the settled position of law that there is difference between grant of bail in case of pre-trial arrest and suspension of sentence, post-conviction. In the earlier case, there may be presumption of innocence, however, in 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. Further the Court while considering an application for suspension of sentence is to consider only the *prima facie* merits of the appeal.
21. The Hon'ble Apex Court in the case of ***Preet Pal Singh vs. State of U.P., (2020) 8 SCC 645*** has observed that there is difference

between grant of bail in case of pre-trial arrest and suspension of sentence, 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, however, in 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. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

*"35. There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and suspension of sentence under Section 389 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. [Dataram Singh v. State of U.P., (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675] However, in 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) CrPC."*

22. The learned counsel for the applicant/appellant has contended that although the charge has been framed under Section 304-B/34 of IPC but it is not found in the entire evidence that the deceased was subjected to cruelty or harassment by the appellant soon before her death.
23. *Per contra* the learned counsel for the state has vehemently opposed the prayer for bail of the appellant and had contended that informant Sanoj Rawani who is the father of the deceased, has been examined as PW.7, has corroborated his first version made in written report and had stated in his testimony that after marriage of her daughter,

applicant had started demanding Rs. 5 lakh as dowry and when the demand was not fulfilled applicant started torturing her and ultimately the accused person/applicant committed murder of her daughter just within few months of her marriage.

24. At this juncture, in view of contentions made by the learned counsel for the parties, it is pertinent to analyse the law on dowry death. Section 304-B IPC, which defines, and provides the punishment for dowry demand. It provides that “dowry death” is where death of a woman is caused by burning or bodily injuries or occurs otherwise than under normal circumstances, within seven years of marriage, and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband, in connection with demand for dowry. Sub-clause (2) provides for punishment for those who cause dowry death.

25. Thus, it is evident that there are three conditions in the aforesaid statute and if those three conditions are fulfilled then the case will come under the purview of Section 304-B. Three conditions which culled out from section 304-B are as follows:

- i. The death caused by burn or bodily injury or occurs otherwise within under normal circumstance.*
- ii. Death was occurred within seven years of her marriage.*
- iii. It has been shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry.*

26. It needs to refer herein that in order to sustain the conviction under Section 304B of the IPC, it is mandatory to establish that soon before death, the victim was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry and death caused by burn or bodily injury or occurs otherwise within under normal circumstance within seven years of victim’s marriage.

27. In the case of ***Major Singh v. State of Punjab, (2015) 5 SCC 201*** a three-Judge Bench of the Hon’ble Apex Court has laid down the

guideline wherein it has been specifically observed that in order to sustain the conviction under Section 304-B IPC, cruelty or harassment is shown to have been meted out to the woman soon before her death. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under :

“10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:

- (i) the death of a woman should be caused by burns or bodily injury or otherwise than under a “normal circumstance”;*
- (ii) such a death should have occurred within seven years of her marriage;*
- (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;*
- (iv) such cruelty or harassment should be for or in connection with demand of dowry; and (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.”*

28. It needs to refer herein that the phrase “soon before” as appearing in Section 304-B IPC cannot be construed to mean “immediately before”. It is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution.

29. When the prosecution shows that “soon before her death such woman has been subjected to cruelty or harassment for, or in connection with, any demand for dowry”, a presumption of causation arises against the accused under Section 113-B of the Evidence Act. Section 113-B of the Evidence Act reads as under:

“113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that

soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”

30. It is evident from the aforesaid provision that the word “shall” has been stipulated therein which provides mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry and as such onus lies on the accused to rebut the presumption and in case of Section 113-B relating to Section 304-B IPC, the onus to prove shifts on the accused.

31. the Hon’ble Apex Court in the case of ***State of M.P. v. Jogendra, (2022) 5 SCC 401*** has pithily summarized the law on Section 304-BIPC and Section 113-B of the Evidence. For ready reference the relevant paragraph is being quoted as under:

“17. In the above context, we may usefully refer to a recent decision of a three-Judge Bench of this Court in Gurmeet 21 Singh v. State of Punjab [Gurmeet Singh v. State of Punjab, (2021) 6 SCC 108 : (2021) 2 SCC (Cri) 771] that has restated (at SCC pp. 111-12, para 9) the detailed guidelines that have been laid down in Satbir Singh v. State of Haryana [Satbir Singh v. State of Haryana, (2021) 6 SCC 1 : (2021) 2 SCC (Cri) 745] , both authored by N.V. Ramana, C.J. relating to trial under Section 304-BIPC where the law on Section 304-BIPC and Section 113-B of the Evidence Act has been pithily summarised in the following words : (Satbir Singh case [Satbir Singh v. State of Haryana, (2021) 6 SCC 1 : (2021) 2 SCC (Cri) 745] , SCC p. 13, para 38)

“38.1. Section 304-B IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

38.2. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-BIPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B of the Evidence Act operates against the accused.

38.3. The phrase “soon before” as appearing in Section 304-BIPC cannot be construed to mean “immediately before”. The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

38.4. Section 304-B IPC does not take a pigeonhole approach in categorising death as homicidal or suicidal or accidental. The reason for such non-categorisation is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.”

(emphasis in original and supplied)

32. In the backdrop of the aforesaid settled legal position, we are re-adverting to the factual aspect of the instant case. Admittedly, the marriage between deceased and the accused/applicant was solemnized on 09.12.2022, and the death of the lady occurred on 01.06.2023 which was about six months from the date of marriage. Thus, death of the victim lady happened within 7 years of the marriage, therefore one of the primary and foremost requisites to invoke the provision of 304 B IPC has been fulfilled herein.
33. Further, it is evident from the testimony of PW-6 Anjani Devi (mother of the deceased) and PW-7 Sanoj Rawani (father of the deceased) that demand of dowry was made from them by the accused/applicant.
34. PW-6 had specifically stated that when she solemnized her younger daughter's marriage, then Mithilesh Kumar (present applicant) started demanding dowry of Rs. 5 Lacs. and when she refused to give money, he used to threaten that he would sell her daughter in Mumbai and later on, he killed her daughter.
35. PW-7 had also substantiated the factum of demand of Rs. Rs. 5 Lacs, and had stated in his testimony that Mithilesh Kumar (present applicant) induced his daughter Priya Kumari into love and solemnized marriage with her and after the marriage, Mithilesh Kumar told his daughter to bring dowry of Rs. 5 Lacs and when the money was not given, he started torturing his daughter. After some

days, Mithilesh Kumar, his sister, elder brother and mother killed his daughter by strangulation.

36. Thus, from the aforesaid testimonies of P.W.6 and P.W.7, *prima facie* the demand of Rs. 5 Lacs as well as torture caused by the appellant/applicant upon the deceased has been established.
37. Further P.W.-8 is the doctor, who had conducted postmortem examination on the dead body of the deceased and opined that ligature mark is antemortem and stated that cause of death is due to Asphyxia as a result of hanging. Thus, from the testimony of P.W.8 it is apparent that the death of deceased had not occurred in normal circumstance, therefore, the unnatural death of deceased is proved from the prosecution evidence.
38. Thus, on the basis of discussion made hereinabove, *prima facie* all the requisite condition for application of Section 304 B IPC appears to be meted out and further by virtue of Section 113-B of the evidence Act presumption is also there, therefore, the contention of the learned counsel for the applicant/appellant that there is no case made out under Section 304 B against the present applicant, is not tenable in the eye of law.
39. Further, applicant has also taken a ground for his suspension of sentence that he is suffering from HIV(AIDS) by annexing his medical report Annexure-1 to this Interlocutory Application. But, this ground for suspension of sentence is not tenable, as on 15.09.2025, the officials from Central Jail, Hazaribagh, were present before this Court and had stated that the applicant is kept in isolation and he is getting treatment in ART Centre, Hazaribagh.
40. Thus on the basis of discussion made hereinabove and further taking into consideration the import of Section 304-B IPC and 113-B Evidence Act as also taking into consideration the ratio of the judgment rendered by the Hon'ble Apex Court in the case of ***Preet Pal Singh vs. State of U.P.(supra)***, this Court is of the view that it is not a fit case where the sentence is to be suspended during pendency of the appeal.

41. Accordingly, the instant Interlocutory Application stands dismissed.

42. It is made clear that any observation made hereinabove will not prejudice the case of the parties on merit since the appeal is lying pending for its consideration.

(Sujit Narayan Prasad, J.)

I Agree,

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

28th November, 2025

Saurabh/-

A.F.R.

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