

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 03.12.2024

Pronounced on: 13.12.2024

Bail App No. 64/2024

CrIM No. 513/2024, 665/2024, 1433/2024

c/w

CRM(M) No. 243/2024

Bail App No. 64/2024

Deepak Tetarwal

.....Appellant(s)/Petitioner(s)

Aged 30 years

S/o Sh. Ramniwas R/o 164, Bheru

Mandi Mohalla, Kolasar, District

Churu, Rajasthan.

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Mohit Vaid, Advocate.

vs

Union Territory of Jammu and Kashmir

..... Respondent(s)

Th. SHO Police Station, Rajouri.

**Superintendent, District Jail, Dhangri,
Rajouri.**

Through: Mr. Bhanu Jasrotia, GA
Mr. Gagan Oswal, Advocate

CRM(M) No. 243/2024

Santosh Devi

.....Appellant(s)/Petitioner(s)

Aged 56 years

W/o Kamal Singh R/o Ward No. 1

Sainik Nagar Behind D.I.E.T

Jhunjhunun, Rajasthan

Through: Mr. Gagan Oswal, Advocate.

vs

1. Union Territory of J&K

..... Respondent(s)

Th. SHO Police Station, Rajouri.

2. Tiju Devi @ Taju

W/O Ramniwas R/O Kolasar Sujangarh,

District, Churu, Rajasthan

3. Ram Niwas

S/O Hanuman Ram R/O Kohasar Tehsil

Shujhan Ghar District Churu Rajasthan

Through: Mr. Bhanu Jasrotia, GA for R-1
Mr. Sunil Sethi, Sr. Advocate with
Mr. Mohit Vaid, Advocate for R- 2 and 3

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

Bail App No. 64/2024

1. In the instant bail petition filed under Section 437 of the Code of Criminal Procedure, the petitioner herein is seeking bail in case titled as "*UT of J&K vs. Deepak Tetarwal and others*" pending before the court of Principal Sessions Judge, Rajouri (for short 'the Trial Court') arising out of FIR No. 467/2023 registered with Police Station, Rajouri under Section 498-A/304-B/109 IPC.
2. The facts emanating from the record would reveal that the petitioner herein is holding the post of Major in the Indian Army and came to be married to one Dr. Kavita (hereinafter referred as 'the Deceased') on 22.04.2023 under Hindu rites and customs, who died an un-natural death on 01.10.2023, which information came to be received by the Police Station, Rajouri on phone from one 150 GH Rajouri Army Hospital through Messenger Call vide No. 9805220002, whereupon the receipt of the said information, the same came to be entered into the daily diary under No. 19 dated 01.10.2023 and proceedings under Section 174 Cr. P. C. came to be commenced by the Police Agency and in the process, site plan came to be prepared and the custody of the dead body of the deceased taken over and post mortem conducted and thereafter the wearing apparels of the deceased as well came to be

seized and after completing all necessary requisite formalities the dead body later was handed over to the Army Authorities under proper receipt. Besides, during the course of proceedings under Section 174 Cr.P.C., laptop and mobile of the deceased were also seized and it also got revealed that the deceased had died in her residential quarter, whereafter statement of mother of the deceased was also recorded besides other persons acquainted with the facts of the case and that during the course of post mortem Virsa of the deceased was obtained, which was submitted to FSL for its opinion and that the personal tab of the deceased was also seized, which contained a written suicide note of the deceased, which revealed that the death of the deceased was a case of dowry death and after taking cognizance of the aforesaid facts, as also the suicide note contained in the tablet of the deceased, the FIR (Supra) came to be registered against the petitioner herein and his parents for commission of offences under Sections 304-B/498-A/109 IPC, whereafter investigation was set into motion and the statements of various witnesses acquainted with the case came to be recorded including the statements of parents of the deceased under Section 164 Cr. P.C. and upon completion of the investigation, alleged offences were found established against the petitioner herein and his parents and consequently charge-sheet came to be presented before the trial court.

3. The petitioner herein has sought bail in the instant petition fundamentally on the premise that he has been falsely implicated in

the FIR/charge-sheet and that though an application for grant of bail before filing of the charge-sheet came to be maintained by the petitioner before the trial court, however, the same came to be dismissed by the trial court on 28.03.2024 and that the petitioner being a Doctor by profession and serving as Major in the Indian Army had married the deceased in accordance with the Hindu rites and customs on 22.04.2023, whereafter he stayed with the deceased without demanding any dowry or harassing her and that the deceased was suffering from a Psychiatric disorder, which fact had been concealed by the deceased and her parents from the petitioner and the deceased had been receiving treatment for the said psychiatric disorder and that the deceased in fact had been pressurising the petitioner to transfer money into her bank account, which not only the petitioner but also his father did and that the petitioner herein never made a demand of dowry from the deceased or her parents and had never been harassing her and in fact had been taking care of the deceased and had also in furtherance thereof changed the name of nominee in all his documents from that of his father in the name of the deceased and that the deceased in fact died on 01.10.2023 under mysterious circumstances at Rajouri when the petitioner herein was away serving at Bikaner, Rajasthan and that the parents of the petitioner though have been admitted to bail by the trial court yet the petitioner came to be arrested and is under incarceration and that the petitioner herein did not commit any offence much less those covered in the FIR/charge-sheet

but the petitioner herein came to be wrongly and falsely roped into the said case and that the petitioner is innocent and did not commit any offence being a serving officer in the Indian Army.

4. Objections to the petition have been filed by the respondent 3 herein, being the mother of the deceased, who came to be impleaded as party respondent in the instant petition on 03.05.2024.

5. **In the objections filed by the respondent 3**, the petition is being opposed *inter alia* on the premise that the petitioner has committed a serious and heinous offence, as such, is not entitled to the concession of bail.

Heard learned counsel for the parties and perused the record.

6. Before advertng to the petition in hand it would be appropriate and advantageous to refer to law laid down by the Apex Court relating the the subject of bail and issued connected thereto.

A. The Apex Court in case titled as **Prahlad Singh Bhati vs. NCT, Delhi** reported in (2001) 4 SCC 280 has held as under:

“The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the

court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted , at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

B. Further a reference to the judgment passed by the Apex Court in case titled as **State of UP vs. Amarmani Tripathi** reported in **(2005) 8 SCC 21** would be relevant, wherein at Para 18 of the judgment the apex Court has held as under:

“18. It is well settled that the matters to be considered in an application for bail are:

(i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) Nature and gravity of the charge;

(iii) Severity of the punishment in the event of conviction;

(iv) Danger of accused absconding or fleeing if released on bail;

(v) Character, behaviour, means, position and standing of the accused;

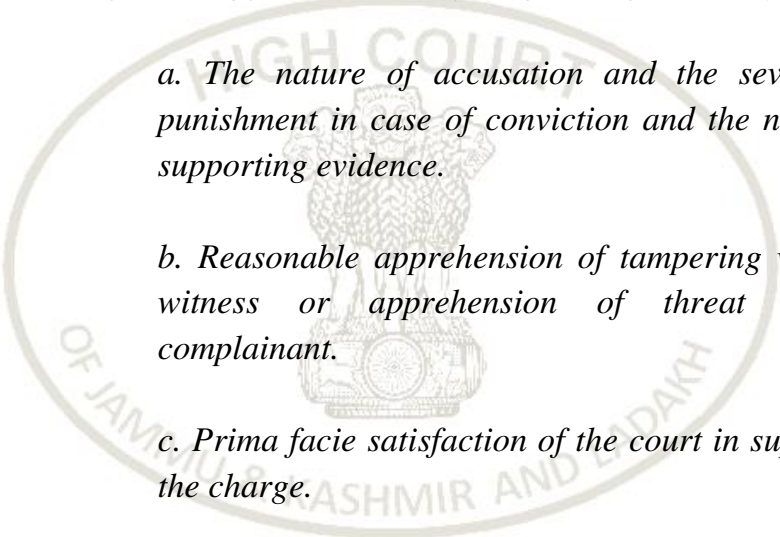
(vi) Likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and

*(viii) Danger, of course, of justice being thwarted by grant of bail (See **Prahlad Singh Bhati vs. NCT, Delhi 2001 (4) SCC 280 and Gurcharan Singh vs. State (Delhi Administration) AIR 1978 SC 179**).*

While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or

*tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in **Kalyan Chandra Sarkar vs. Rajesh Ranjan, 2004 (7) SCC 528:***

"The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non- application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

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- a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
 - b. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
 - c. Prima facie satisfaction of the court in support of the charge.*

*(See **Ram Govind Upadhyay vs. Sudarshan Singh, 2002 (3) SCC 598 and Puran vs. Rambilas 2001 (6) SCC 338.**)*

While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary."

7. Keeping in mind the aforesaid position of law and reverting back to the case in hand, it is significant to mention here that the petitioner herein, as has been noticed in the preceding paras has based the foundation of the case set up in the instant petition for grant of bail

primarily and fundamentally on the premise that he is innocent and has not committed any offence, much less those alleged in the instant case against him, as also that he is a law abiding citizen and holding a responsible rank in the Indian Army.

8. It is significant to mention here that the said contention of the petitioner can neither be looked into by this Court at this stage nor can the said contention of innocence of the petitioner can be taken to be a gospel truth, in presence of the evidence collected by the investigating agency during the course of investigation whereupon the completion of the investigation the petitioner herein has been found to have committed the alleged offences, so much so, even the trial court is stated to have framed charges against the petitioner and has set down the case for trial.
9. Furthermore, having regard to the gravity of the accusations levelled against the petitioner, inasmuch as the position of the petitioner being an army personnel/officer where there is every likelihood that the petitioner would intimidate the witnesses acquainted with the case directly or indirectly so as to dissuade them from disclosing facts to the trial court or may even tamper with the prosecution evidence, it is deemed appropriate and desirable to decline the concession of bail to the petitioner herein.
10. For the aforesaid reasons, **the instant petition along with the connected applications is dismissed.**

11. It is however made clear that any observation made hereinabove shall not be construed to be expression of any opinion about the guilt or innocence of the petitioner herein.

CRM(M) No. 243/2024

1. In the instant petition, the petitioner herein has invoked the inherent power of this Court for quashing order dated 20.10.2023 passed by the court of Additional Sessions Judge, Rajouri in case titled as “*Smt. Tiju Devi vs. UT of J&K*”, as also order dated 29.11.2023 passed by the court of Sub-Judge Special Mobile Magistrate, Rajouri in case titled as “*Ram Niwas vs. UT of J&K*”.
2. **Facts** giving rise to the filing of the instant petition reveal that FIR No. 467/2023 came to be registered by Police Station, Rajouri under Section 498-A, 304-B and 109 IPC against the respondents 2 and 3 herein alongwith their son, namely, Deepak Tetarwal whereupon the respondent 2 herein moved an application before the court of Additional Sessions Judge, Rajouri for grant of anticipatory bail, which court granted an interim bail to the respondent 2 herein on 20.10.2023 and subsequently the respondent 3 herein as well moved an application before the court of Sub-Judge Special Mobile Magistrate, Rajouri for grant of bail, which court as well granted bail to the respondent 3 in terms of order dated 29.11.2023.
3. The petitioner herein has challenged the impugned orders on multiple grounds urged in the instant petition, fundamentally on the ground that the bail granted to the respondents 2 and 3 by the courts below came to

be granted in haste and without appreciating the facts of the case, inasmuch as against the settled position of law.

Heard learned counsel for the parties and perused the record.

4. Perusal of the record would reveal that the court of Additional Sessions Judge, Rajouri on 20.10.2023 has granted bail to the respondent 2 herein in anticipation of her arrest in FIR in question while having taken cognizance of the fact that the applicant/respondent 2 herein has not committed any offence, but has been falsely implicated in the FIR and is rather remotely associated with the case being resident of Rajasthan. Record further reveals that the said bail granted to the respondent 2 is interim in nature and subject to conditions that the respondent 2 will remain present before the Investigating Officer as and when required and render all possible help required for completion of the investigation and also will not approach or influence the prosecution witnesses or in any manner tamper with the prosecution evidence and also will not misuse the concession of bail in any means whatsoever.
5. Further perusal of the record reveals that in terms of order dated 29.11.2023, passed by the court of Sub-Judge Special Mobile Magistrate, Rajouri the respondent 3 herein having initially granted interim bail on 27.10.2023, and consequently made the said order absolute in terms of impugned order dated 29.11.2023, after taking into consideration the facts that the terms and conditions set out in the

initial bail order dated 27.10.2023 have had been duly fulfilled and complied with by the respondent 3 herein.

6. It is significant to mention here that as per the appearing counsel for the parties, investigation in the FIR (Supra) has been completed and even chargesheet stands laid before the competent court, wherein trial as well has commenced.

7. Insofar as the law regarding cancellation of bail is concerned, the same is no more res integra and stands settled by a catena of judgments rendered by the Apex Court, postulating the conditions necessary for seeking cancellation of bail. In this regard, a reference to the judgment passed by the Apex Court in case titled as **Himanshu Sharma vs. State of Madhya Pradesh** reported in **(2024) 4 SCC 222** would be relevant, wherein at para 11, following has been held:

“11. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellations thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail:

- i. The accused has misused the liberty granted to him;*
- ii. Flouted the conditions of bail order;*
- iii. That the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail;*
- iv. That the bail was procured by misrepresentation or fraud.*

8. Having regard to the aforesaid position of law, inasmuch as the case set up by the petitioner in the instant petition against the concession of bail granted to the respondents 2 and 3 herein, while seeking cancellation of bail, it is manifest that the petitioner has not spelt out there in the petition any of the circumstances provided by the Apex

Court in the judgment (Supra), which would warrant cancellation of bail granted to the respondents 2 and 3 herein.

9. In this view of the matter, **the instant petition is found to be grossly misconceived and the same is accordingly dismissed.**
10. **A copy of this common judgment shall be placed on record file of each petition.**

(JAVED IQBAL WANI)
JUDGE

Jammu
13.12.2024
Sahil Padha

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.

