**CASE ANALYSIS**

**GURSHARAN KAUR AND ANR. V. THE STATE (NCT) OF DELHI**

**BY-**

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**PROVISION OF ANTICIPATORY BAIL IN CRUELTY AND DOWRY DEATH CASES**

**LEGAL PROVISION OF BAIL IN USA**

**LATEST CASES ON ANTICIPATORY BAIL**

**BACKGROUND AND FACTS OF THE CASE**

Petitioner nos. 1 and 2 in the present case are Mother-In-Law and Jethani respectively of the deceased, who died an unnatural death by hanging after about five years of her marriage. Admittedly deceased has died an unnatural death within seven years of marriage. FIR has been registered on the basis of statement of father of the deceased recorded by Tehsildar. Learned counsel for the petitioners has contended that in the FIR father of the deceased has leveled allegations of demand of dowry and harassment against the husband and not against the petitioners. Petitioners had neither demanded any dowry nor harassed the deceased during her stay in the matrimonial home. By comparison, learned PP has also contended that in the investigating officer's supplementary statement after about five days of the incident, father of deceased has named the petitioners also as the persons who had demanded dowry from him. It is contended that the mother of deceased had also repeated the same allegations of demand of dowry and harassment in her statement under Section 161 Cr.P.C. Now the petitioners have approached this hon'ble high court for grant of anticipatory bail U/S 438 of Cr. PC. Now it is before this hon'ble court to grant anticipatory bail in matters involving harassment and cruelty to women.

In more than a century long judicial history of this country, anticipatory bail was always refused in matter involving harassment and cruelty to women punishable by section 489-A and 304-B of IPC[[1]](#footnote-2)(dhirajlai, 2005), it was only in the early 2000s that the apex court started adopting liberal view in the matters of anticipatory bail and setup some flexible guidelines and straightjacket formula for grant or refusal of anticipatory bail. After this a plea that court has no jurisdiction to grant bail in a dowry death case u/s 304-B, IPC has been held to be not tenable, grant and refusal of anticipatory bail is now always taken on facts and circumstances of each case.

**PROVISION FOR BAIL IN USA**

**Historical Background**

Bail law came through English observe and laws to the U.S. And before the U.S. took over Constitution and Bill of Rights, a 1789 judicial act, provided a right to bail all told cases of non-capital standing. For someone guilty of a law-breaking (where death may be a potential punishment), bail was voluntary looking on the severity of the crime. The Eighth change to the U.S. Constitution provides, "excessive bail shall not be needed." The U.S. Supreme Court has dominated that the Constitution permits holding a litigator while not bail unfinished a criminal trial. No absolute right to bail exists.

The decide or justice decides the quantity of bail by deliberation several factors:

1. The danger of the litigator fleeing,

2. The kind of crime alleged,

3. The "dangerousness" of defendants, and

4. The protection of the community.

The decide or justice in America could unleash defendants on their own security (without a payment of money), on the promise that they're going to seem for all hearings and for trial. this is often typically done if defendants have a gradual job, roots within the community, or alternative personal circumstances indicating that they're going to not break away.

In most, but not all, states, defendants who can’t come up with the amount of their bail may make arrangements for their release through a bail bondsperson. In return for the defendant's putting up a percentage of the total bond, usually 10 percent, the bondsperson will guarantee the remaining amount to the court should the defendant not be present for any court appearance.

**TYPES OF BAILS**

**Cash Bail-** just like the name describes, a money bail implies that the litigator (or family or friends) pays the total bail in money. This varies by state, however some places can settle for alternate varieties of payment, like check or Mastercard.

**Property Bond**- solely employed in bound jurisdictions for rare cases, defendants can give up property (like a home or farm) rather than cash. This land counts as collateral for the bond, and also the court records a lien on the property.

**Own security Bail-** If the decide approves, a litigator may be “released on their own recognizance”. additionally called a free on security (R.O.R. or O.R.) bond, this implies that the litigator doesn't need to post bail, however signs a promise that they're going to refrain from criminal activity and show up to any or all their court hearings. this sort is sometimes solely given to people who are charged with a minor offense, “low flight risk”, and cause very little danger to the community..

**NOTE: THERE IS NO PROVISION OF ANTICIPATORY BAIL IN USA**

**ISSUES OF THE CASE**

* **Can an anticipatory bail be granted in the case of dowry death?**
* **Can an anticipatory bail be granted even in cases attracting punishment of life or death?**
* **Can an anticipatory bail be granted prior to actual arrest?**
* **Whether anticipatory bail u/s 438 CRPC is time bound or not?**

**PETITIONER'S ARGUMENTS**

1. Anticipatory bail can be granted even in the cases attracting punishment of life or death, in case sufficient ground is made out for that.
2. It would be fallacious to contend that anticipatory bail cannot be granted in the offence relating to "dowry death" even if it is made out for grant of dowry death.
3. Anticipatory bail can be granted even prior to actual arrest as otherwise the whole idea of protecting the dignity of innocent persons will be destroyed.

**RESPONDENT'S ARGUMENTS**

1. Anticipatory bail cannot be granted in cases attracting punishment of life or death.
2. Anticipatory bail cannot be granted in the offences relating to "dowry death" u/s 438 CRPC and cruelty of women u/s 498-A IPC.
3. Anticipatory bail cannot be granted prior to actual arrest as it would result in fleeing of offenders.

**498 (A) IPC[[2]](#footnote-3)**(dhirajlal, 2005)**-** *Whoever, being the husband or the relative of the husband of a women, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

**Explanation***- (a) any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life,limb or health of a women; or*

*(b) Harassment of the women where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand.*

This section was introduced in the code to combat the menace of dowry deaths, when the question is whether the commission of suicide by a women had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

The Apex court has observed that this section has given a new dimension to the concept of cruelty for the purpose of matrimonial remedies and that the type of conduct described here would be relevant for proving cruelty(Shobha rani v. madhukar reddy, 1988)[[3]](#footnote-4)

***Mens rea***- the requirement of proving that soon before her death the women was subjected to cruelty or harassment by her husband or any relation of her husband for the demand of dowry shows that the legislation has imbibed the necessary mens rea for the offense of dowry death(krishan lal v. union of india, 1994)[[4]](#footnote-5)

***Actus reas-*** the apex court has observed that in-laws of a deceased cannot be roped in only on the ground of being the close relatives of the husband of the deceased, some overact must be attributed to them in the incident and the same should be proved beyond reasonable doubt.

**Burden of proof**- the onus is on the prosecution to show the ingredients of the offence.

**Constitutional validity of S-498(A)—**The husband and relatives of the husband of a married women form a class apart by themselves and it amounts to reasonable classification especially when a married women is treated with cruelty within the four- walls of the house of her husbandand there is no likelihood of any evidence available, this section cannot be said to be violative of article 14 of the constitution.[[5]](#footnote-6)

**Cruelty by persistent demand**- cruelty or harassment need not be physical, mental torture may amount to cruelty in a given situation. The bride in this case was repeatedly taunted, maltreated, and mentally tortured right from the next day of her marriage regarding the demands for dowry and subsequently the bride committed suicide.[[6]](#footnote-7)(pawan kumar v. state of haryana , 1998)

**Mere demand of dowry an offence**- The Calcutta high court has expressed the opinion that by virtue of clause (b) of the explanation to s 498A, mere demand of dowry would be an offence, but for the purpose of ss 4, 2(1) of the Dowry prohibition Act 1961, it is necessary that dowry should have been given or agreed to be given.[[7]](#footnote-8)(Shankar prasad v. state, 1991)

**304(B) IPC** – *(1)Where the death of a women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her 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 for, or in connection with any demand for dowry, such death shall be called “ Dowry death”, and such husband or relative shall be deemed to have caused her death.*

*(2) whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.*

The Apex court took occasion in **Shanti v. state of Haryana**(shanti v. state of haryana, 1991)**[[8]](#footnote-9)** to explain the ingredients of s. 304(B) ; JAYCHANDRA REDDY J. said “ A careful analysis of section 304(B) shows that a section has following essentials:

1. The death of the women should be caused by burns or bodily injury or otherwise under normal circumstances;
2. Such death should have occurred within seven years of her marriage[[9]](#footnote-10)(Arbind kumar ambasta v. state, 2002)
3. She must be subjected to cruelty or harassment by her husband or any relative of her husband
4. Such cruelty or harassment should be for or in connection with demand for dowry.[[10]](#footnote-11)(Bajrang v. state, 1998)

The supreme court has observed that death” otherwise than in normal circumstance” would mean that the death was not in the usual course but apparently under suspicious circumstances if it was not caused by burn or bodily injury, death of a women by suicide occurring within seven years of marriage cannot be described as occurring in normal circumstances.[[11]](#footnote-12)(Rajayyan v. state of kerela, 1998)

JAYCHANDRA REDDY J. disapproving the high court view observed that ss. 304(B) and 498A cannot be held to be mutually exclusive, these provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. If the case is established, there can be a conviction under both the sections but no separate sentence would be necessary u/s 498A in view of the substantive sentence being awarded for the major offence u/s 304(B)[[12]](#footnote-13)(Padmaben patel v. state of gujrat, 1991)

**161 CRPC**(dhirajlai, 2005) - **Examination of witnesses by police**.

*(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.*

*(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.*

*(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.*

The apex court observed that where the witnesses were alleged to have improved their statements in the court, as they had not given such a statement to the police u/s 161 Cr..P C, the so-called improvement by witnesses came within the purview of ‘omission’ and not ‘contradiction’ with the statement u/s 161 Cr.P C which can be legally proved and utilized by the accused and not an ‘omission’.[[13]](#footnote-14)(Lokhande, 1975)

**Section 437 Cr.P.C.-When bail may be taken in case of non- bailable offence.**

*(1) When any person accused of, or suspected of, the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail*

**Statement of reasons mandatory**- A statement of reasons for refusing bail has been held to be mandatory, the accused in this case remained in custody for long even after investigating agencies had laid its final report, the high court refused the bail by a non-speaking order. The supreme court allowed the accused to approach the high court again and high court was asked to pass a reasoned order.[[14]](#footnote-15)(Dhruv K. jaiswal v. state of bihar, 2000)

The **Rajasthan High Court** refused bail to the accused mother-in-law of the victim in a dowry death case, whose session trial was about to be concluded shortly and there was nothing on record to show that if she was not released, she would die in judicial custody.[[15]](#footnote-16)

**Section 438 CRPC**(dhirajlai, 2005)**-Direction for grant of bail to person apprehending arrest.**

*(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.*

*(2) When the High Court or the Court of Session makes a direction under sub- section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-*

*(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;*

*(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;*

*(iii) a condition that the person shall not leave India without the previous permission of the Court;*

*(iv) such other condition as may be imposed under sub- section (3) of section 437, as if the bail were granted under that section.*

*(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, be shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub- section (1****).***

**Historical background**:Anticipatory Bail became part of the Cr. PC in 1973 after the 41st Law Commission Report (1969) recommended for the inclusion of such provision. It was included to protect the arbitrary violation of the right to personal liberty of the person.

**Necessity**:Sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail.

Apart from false cases, when there are reasonable grounds for believing that a person accused of an offence is not likely to abscond or misuse his liberty while on Bail, then there is no need to first submit him to custody, make him/her remain in prison and then apply for Bail. In such cases, Bail could be granted earlier.

**Jurisdiction:**The section clearly contemplates two concurrent jurisdictions, namely of the high court and the court of sessions. It is left to the person to choose either of them. The provision does not create any bar against moving the high court without first moving the sessions court.However, it has been held that unless exceptional circumstances exist, the court of session should be approached first. where an application is rejected by the court of session, a fresh application cannot be made to the high court.[[16]](#footnote-17)(Amiya kumar sen v. state of west bengal, 1979)

**Dowry death:** Where anticipatory bail is grantedby the high court in a dowry death case without a statement of reasons, the supreme court set it aside and said that the high court must give reasons for the exercise of its jurisdiction.(Raghuveer saran agarwal v. state of UP, 1998)[[17]](#footnote-18) the plea that the court has no jurisdiction to grant bail in a dowry death case u/s 304(b), IPC has been held to be not tenable.

**439 CRPC**(dhirajlai, 2005)**- Special powers of High Court or Court of Session regarding bail.**

(1*) A High Court or Court of Session may direct-*

*(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub- section;*

*(b) that any condition imposed by a Magistrate when releasing an person on bail be set aside or modified: Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.*

*(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.*

**Dowry torture**: the accused used to torture his deceased wife for dowry and for giving birth to girl child, but it was not the case of the prosecution that the accused, if enlarged on bail, would run away from justice or otherwise misuse his freedom. There was no impediment to the grant of bail, the gravity of offence is not the sole consideration.[[18]](#footnote-19)(Raj kumar v. state of H.P , 2002)

**Cancellation of anticipatory bail:** There is a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted. Normally very cogent and overwhelming grounds or circumstances are required for cancelling bail already granted.

**Cancellation of bail in dowry death and bride burning cases:** In a case on the point before the supreme court(Mahant chand nath yogi v. state of haryana , 2003)[[19]](#footnote-20): the accused was charged with the offences under sections 498-A and 304-B of IPC, arising out of the unnatural death of his wife within one year of their marriage.The apex court said that; Giving reasons is different from discussing merits and demerits, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken, but the same does not mean that whilst granting bail some reasons for *prima facie* concluding why bail was being granted did not have to be indicated.

**LATEST CASE LAWS**

The Supreme Court (SC) in **Sushila Aggarwal v. State of NCT of Delhi (2020)[[20]](#footnote-21)**(Sushila aggarwal v. state(NCT of Delhi), 2020) case delivered a significant verdict, ruling that no time limit can be set while granting anticipatory Bail and it can continue even until the end of the trial.

The apex court's judgment was based on the following observations -

* There is nothing in Cr. PC that indicates the grant of anticipatory Bail should be time-bound.
* However, under Cr. PC, it is discretionary power of the Court to decide on a case-to-case basis (depending upon the stage at which the Bail application has moved or prevalence ofany peculiar circumstances necessitating to limit the tenure) and impose a time limit while granting pre-arrest Bail.Also, this duration primarily does not end after first summoning by the Court and can continue till the end of the trial period.
* Application for anticipatory Bail could be filed by a person before the FIR (First Information Report) as soon as the facts make clear there is a substantial reason for the arrest

**JUDGEMENT IN A GLANCE-**

* Based upon the facts and circumstances of the present case the court has granted anticipatory bail to the present petitioners.
* It cannot be said that anticipatory bail cannot be granted even if a case is made out for the grant of anticipatory bail in a dowry death case.
* Anticipatory bail can be granted prior to actual arrest as it would protect the basic foundation upon which the provision was made.
* No time limit can be set while granting anticipatory bail and it can continue even until the end of the trial

**OVERVIEW OF THE JUDGEMENT**

The judges in the present case have adopted a liberal approach in the matter relating to dowry death and cruelty on women by husband and his relatives by granting anticipatory bail to the petitioners even prior to actual arrest and also not imposing any time limit for the same.

The high court paying reliance on the views in **Siddharam Satlingappa's**(Siddharam satlingappa v. state of maharashtra , 2011)[[21]](#footnote-22)case has adopted some flexible guidelines for grant of anticipatory bail and said that anticipatory bail can be granted even in matters of dowry death

The petitioners in the present case are women, they were not named in the FIR as the persons who had demanded dowry and harassed or tortured the deceased when demand was not met and also no specific allegation of demand of dowry and harassment had been leveled against them , thus it appears from the facts and circumstances of the case that there should not be any hindrances in the way of grant of anticipatory bail , which also appears to be the reality of the case .

The high court ordered that in case of arrest petitioners be released on bail, subject to their furnishing personal bond of Rs 20000 each with one surety each in the like amount to the satisfaction of the IO/SHO concerned and shall cooperate in the investigation and appear before the investigating officer as and when they are called upon to do so.

**SUGGESTIONS**

The high court in the present case has not given reasons for the grant of anticipatory bail as it is a settled principle of law that a high court or a sessions court while granting anticipatory bail should give necessary reasons for such act and when power under s. 438 is exercised without giving reasons or on irrelevant considerations not germane to the determination of the application, the supreme court has to interfere in order to avoid miscarriage of justice

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2. Ratanlal & Dhirajlal, *The Indian Penal Code* [↑](#footnote-ref-3)
3. Shobha rani v. Madhukar Reddy, (1988)1 SCC 105 [↑](#footnote-ref-4)
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20. Sushila Aggarwal v. State(NCT of Delhi) (Supreme court, 29.01.2020) SLP NO. 7281-7282 [↑](#footnote-ref-21)
21. Siddharam Satlingappa Mhetre v. State of Maharashtra and Others, (2011) 1 SCC 1 [↑](#footnote-ref-22)