

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
&
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS**

Tuesday, the 13th day of December 2022 / 22nd Agrahayana, 1944

CRL.M.APPL.NO.1/2022 IN CRL.A NO. 694 OF 2022

SC 1231/2021 OF ADDITIONAL SESSIONS COURT-I, KOLLAM

PETITIONER/APPELLANT:

KIRAN KUMAR S, AGED 31 YEARS S/O SADASIVAN PILLAI, CHANDRAVILASAM
VEEDU, AMBALATHUMBHAGOM MURI, PORUVAZHI VILLAGE, KUNNATHOOR,
AMBALATHUMBHAGOM P.O., KOLLAM-690520.

RESPONDENTS/RESPONDENT:

1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031.
2. DEPUTY SUPERINTENDENT OF POLICE, SASTHAMKOTTAH P.O, SASTHAMKOTTAH, KOLLAM-690521.
3. ADDITIONAL R3: THRIVIKRAMAN NAIR, AGED 53 YEARS S/O. KRISHNA PILLAI, KULATHINGARA, MEDATHIL PUTHEN VEEDU, KAITHODU P.O, NILAMEL, KOLLAM-691535 , IMPEADED AS PER ORDER DATED 19/10/2022 IN CRL.M.A.2/2022

Application praying that in the circumstances stated therein the High Court be pleased to suspend the execution of the sentence in judgment dated 24.05.2022 in Sessions Case No.1231/2021 on the file of the Addl. District and Sessions Judge-I , Kollam and to release the petitioner/appellant , who is in confinement , on bail , pending disposal of the criminal appeal in the interest of justice.

This Application coming on for orders upon perusing the application and upon hearing the arguments of M/S.C.PRATHAPACHANDRAN PILLAI, N.G.SINDHU, PRIYA SHANAVAS, T.S.SARATH, V.C.SARATH, MOHAPRASEED MOHAN, V.RENJITH KUMAR , Advocates for the petitioners and of the PUBLIC PROSECUTOR for the respondent 1 and 2 and M/S. S.RAJEEV, V.VINAY, SARATH K.P., ANEER M.S, PRERITH PHILIP JOSEPH Advocates for the Additional respondent 3, the court passed the following:

p.t.o

ALEXANDER THOMAS & SOPHY THOMAS, JJ.

=====
Crl.M.A.No. 1 of 2022 in Crl.A.No.694 of 2022

*[arising out of the impugned judgment dated 24.05.2022 in S.C. No.1231
of 2021 on the files of the Additional Sessions Court-I, Kollam]*

=====
Dated this the 13th day of December, 2022

ORDER

Sophy Thomas, J.

Crl.M.A.No. 1 of 2022 in Crl.A.No.694 of 2022

This is an application filed by the appellant/accused in S.C.No1231 of 2021 on the file of Additional District and Sessions Judge-I, Kollam under Section 389(1) of Cr.P.C., for suspension of sentence and to release him on bail.

2. The applicant/appellant was convicted and sentenced inter alia for offences punishable under Sections 304B, 306 and 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961, and was sentenced to imprisonment for various terms including rigorous imprisonment for 10 years under Section 304B of the Indian Penal Code, 1860.

3. The prosecution case is that a 23 year old girl named Vismaya, who was the wife of the appellant/accused, committed

suicide at her matrimonial home, at the wee hours of 21.06.2021, by hanging inside the bathroom, unable to bear the matrimonial cruelties and illtreatment from the appellant/husband, both physical and mental, in connection with demand for dowry. The appellant/accused abetted and instigated her to commit suicide, subjecting her to severe mental and physical cruelties. The appellant/accused demanded dowry from the deceased and her parents, in contravention of the provisions of the Dowry Prohibition Act, 1961.

4. Sri.C.Prathapachandran Pillai, the learned counsel appearing for the applicant/appellant, contended that the finding of the trial court was based on conjunctures, surmises, assumptions and on *per se* inadmissible evidence. The conviction was mainly based on the contents of the call records. But the said call records, approximately 5.5 lakh in number, were never subjected to investigation, though 198 records were marked from among them. No materials were available to presume commission of offence under Section 304B of the IPC. Section 113B of the Evidence Act also will not come into operation, as there was nothing to show that, soon before the death, the victim was subjected to harassment, in connection with demand of dowry. The testimony of PW11, the father of the applicant/appellant, who witnessed the quarrel between the applicant/appellant and the deceased, will show that the quarrel was not even remotely connected with demand of dowry. The deceased

was longing for a child, and she feared that without the blessings of her father, she would not conceive. Since father of the deceased sent some messages cursing her, she wanted to go and meet her father in the night of 20.06.2021, and over that issue, the applicant/appellant shouted at her. Thereafter, she committed suicide by entering into the bathroom, and the applicant/appellant never subjected her to harassment in connection with demand of dowry, so as to attract an offence punishable under Section 304B of the IPC. Further, there is nothing to show that he subjected her to matrimonial cruelties physical or mental or abetted her suicide. Moreover, he never demanded or received any dowry from the deceased or her parents.

5. Learned counsel further contended that the applicant/appellant is an young man, aged only 31 years, and he was working as Assistant Motor Vehicle Inspector in the Motor Vehicles Department. He was apprehended on 22.06.2021, in connection with the incident, and was released on bail only on 03.03.2022. He was convicted and sentenced vide impugned judgment dated 24.05.2022, and since then he is in jail. He is challenging the conviction and sentence, as there is no clear or cogent evidence to prove his guilt. According to him, the impugned judgment is bad in the eye of law. Along with the appeal, he preferred the above Crl.M.A.No. 1 of 2022, for suspension of the sentence and to release him on bail, till the disposal of appeal.

6. Smt.S.Ambika Devi, Learned Special Government Pleader

for women and children, representing the 1st respondent-State, filed written objection with the following contentions. Smt.Vismaya, a 23 year old young girl, doing final year BAMS in the Corporate Medical College, Pandalam, having high hopes and aspirations regarding her future, was given in marriage to the applicant/appellant, an Assistant Motor Vehicle Inspector, on 31.05.2020. Father of Smt.Vismaya had agreed to give 100 sovereigns of gold ornaments, 1.20 Acres of landed property and a car as her parental share in connection with the marriage, on a query made by PW11, the father of the accused, on the date of betrothal. A new 'Yaris' car was purchased by PW1, but on the wedding eve, the applicant/appellant expressed his displeasure with the brand of the new car purchased, and he demanded deceased Vismaya to replace it with another car of his choice. PW1, her father, agreed to purchase a new car as demanded by him. After ten days of marriage, the applicant/appellant along with the deceased, went to the bank for opening a Locker, where the gold ornaments were weighed by the accused and he found that it was less in quantity, than agreed to be given. He put her ornaments in his own locker instead of opening a locker in her name or even in their joint name, as agreed. He continuously abused, insulted and even assaulted the deceased on account of the car, and also regarding the deficit in gold ornaments, given to her, from her family. On 29.08.2020, at 2.25 p.m., the appellant assaulted her while traveling in the car given from her family, and she had to get down

half way through, to take shelter in a neighbouring house. On 03.01.2021, the applicant/appellant took her to her paternal house during midnight and assaulted her in front of her brother, and even abused and assaulted his brother. He left the deceased and the car at her house, saying that he was given a 'scrap car' and a 'waste girl', and he declared that the future course could be decided only after giving him the assets promised. He even threw away the gold chain given to him by PW1 at the time of marriage. On 11.01.2021, parents of the deceased went to the house of the applicant/appellant, for inviting him and his family members to the marriage of the brother of the deceased. Since they realised that the deceased was facing harassment from the applicant/appellant, they took her back to their house. Neither the applicant/appellant nor his family members attended the marriage of her brother. A mediation talk was slated to be convened on 25.03.2021 by the community leaders; but meantime, the applicant/appellant exerted pressure on the deceased and she was taken back to his house, from her college, on his birthday on 17.03.2021, without informing her family members. Obviously, her father was not happy with her decision to go back to her matrimonial home. On 21.06.2021, PW1, the father of the deceased, was informed that the deceased was admitted in Padmavathy Hospital in a critical condition. When he reached the hospital, his daughter was found dead.

7. The learned Special Government Pleader pointed out that

the call records collected from the mobile phones of the applicant/appellant, the deceased and their near relatives are relied on by the applicant/appellant, also, to plead his innocence, and he has no case that the call records are manipulated in any manner. No exceptional circumstances are brought out to suspend the sentence and to release him on bail. Since there is finding of competent court of jurisdiction, on the guilt of the applicant/accused, he cannot claim the benefit of presumption of innocence, for the purpose of getting suspension of sentence awarded by the trial court. There is every likelihood of confirming the lower court judgment. Moreover, the prosecution as well as the father of the victim have preferred separate appeals for enhancing the sentence and compensation. So learned Special Government Pleader prayed for dismissal of this application.

8. Sri.S.Rajeev, the learned counsel appearing for additional R3, the father of the deceased, filed argument notes incorporating the relevant portions of deposition of witnesses as well as the extract of the call records between the deceased, her parents, sister-in-law and her childhood friend, to show that she was subjected to physical and mental cruelties on demand of dowry by the applicant/ appellant.

9. Now let us see whether any exceptional grounds are made out to allow the application filed by the applicant/appellant to suspend his sentence, and to release him on bail, pending the appeal.

10. The mobile phone conversations and whatsapp chats

between the deceased, her parents, friends, and the applicant/appellant were also relied on by the Trial Court, to find him guilty of the offences alleged apart from the oral testimony of the witnesses. It is pertinent to note that the applicant/appellant has no case that the call records were forged or manipulated to create false evidence. It is more pertinent that the applicant/appellant also is relying on some of the call records and whatsapp chats marked from the side of prosecution to plead his innocence.

11. Sri. C.Prathapachandran Pillai, the learned counsel appearing for the applicant/appellant, relied on Ext.P88(ax), Ext.P87(ae), Ext.P87(af)-D22, Ext.P87(ag), Ext.P87(ai), Ext.P87(am), Ext.P87(ao), Ext.P87(aq), Ext.P87(u)-D15, Ext.P86(a), Ext.P87(h) etc., the chats between the applicant/appellant and the deceased to say that the deceased was having a normal and friendly marital relationship with the applicant/appellant. In Ext.P88(ax) dated 16.03.2021, she had asked the applicant/appellant whether he could give her a baby. Once, she asked him whether he could purchase beer for her. Moreover, on the fateful night, she invited him to play "Eight Pool" game in Mobile Phone.

12. The deceased wanted the applicant/appellant to take her to her paternal house, to seek blessings of her father in the mid-night of 20.06.2021 and since he refused, they quareled with each other, and later she committed suicide, is the case projected by him. The applicant/appellant and the deceased lived together for about one

year and 21 days since their marriage on 31.05.2020. We cannot presume that they had no good moments at all in their family life to talk cordially. Ext.P88(ax) was on 16.03.2021 while they were living separately and on the next day the deceased was taken to her matrimonial home by the applicant/appellant, which happened to be his Birthday, that too from her college and without informing her family members.

13. The depositions of PWs 1 to 4, the call records between the deceased with her mother-PW3, her friend-PW4, her sister-in-law-PW2 and also the call records between PW1-the father of the deceased and PW11-the father of the accused are all pointing towards the fact that the accused wanted to get a new car of his choice or its equivalent value of Rs.10 lakh from her house, and also the deficit gold ornaments, which was agreed to be given from her family, and the deceased was abused and assaulted on that account continuously, and many a times, she was asking her mother to deposit Rs.10 lakh or at least Rs.7 lakh in the bank account for giving it to the applicant/appellant. She was expressing her helplessness to continue in her matrimonial home suffering the illtreatments, on account of his demand for car and gold. Ext.P87(r), Ext.P87(v), Ext.P87(w), Ext.P87(x), Ext.P87(aa), Ext.P87(ac), Ext.P87(ad), Ext.P87(ag), Ext.P87(aj), Ext.P87(ak), to Ext.P87(al), Ext.P87(a) to Ext. P87(f) are all supporting the case of the prosecution that the applicant/appellant was harassing her on demand of dowry.

Ext.P87(a) to Ext.P87(f), the whatsapp chats, between the deceased and the sister of applicant/appellant dated 13.06.2021 i.e., just one week before the suicide will show that the deceased was put under pressure by the applicant/appellant on demand of dowry, and she wanted to go back to her paternal house, for which she was seeking the help of her sister-in-law. Ext.P10 whatsapp chat between the deceased and her childhood friend-PW4 dated 24.05.2021 will show the mental and physical harassment the deceased was subjected to by the applicant/appellant, and the fact that she was not even allowed to contact her parents.

14. Learned counsel for the applicant/appellant, Sri.C.Prathapachandran Pillai, would rely on Ext.P88(ar) dated 20.02.2021 and Ext.P88(b) dated 06.05.2020, the conversations between the applicant/appellant and the deceased to say that even the deceased was admitting that the accused never demanded a car from her family. But on going through the entire text, it is evident that he was not happy with the car purchased by her father, as it was not the car of his choice. PW11-the father of the applicant/appellant is admitting the fact that on the fateful night on 20.06.2021, there occurred a quarrel between the accused and the deceased; but according to him, it was on account of a curse message sent by her father, and she wanted to go to her house to see her father in that midnight, which the applicant/appellant did not like. In the statement filed by the accused under Section 313 (5) of Cr.P.C., the accused has

stated that he took her mobile phone to keep it aside, but before that she had deleted that curse message. The story put forward by the applicant/appellant and his father seems to be not trustworthy *prima facie*, and it appears to be an exaggeration. In normal human parlance, it is difficult to believe that since her father did not respond to her call or even sent a curse message, drove her to take a decision to end her life at her budding age, that too, just one year after her marriage. It is also difficult to believe their story that she was aspiring for a baby and since she got menstruation on the date of incident, she became desperate, and she committed suicide. Even if her father was not happy with her reunion with her husband, if she was living happily with her husband, there was no chance for her to take a wrong decision to end her life.

15. PW11, the father of the applicant/appellant, is admitting the fact that on 29.08.2020, while returning from Kollam, there occurred an altercation between the applicant/accused and the deceased. But according to him, it was with respect to the mileage of the car. He admitted that on 29.08.2020, i.e., on the date of the said altercation, PWs 1 and 3 reached the house of the accused and there was a discussion regarding the car and the gold. The incident on 03.01.2021 that the accused took Vismaya to her paternal house during midnight also is admitted by PW11-the father of the accused. But now the applicant/appellant is relying on the mobile conversation between himself and the deceased to say that he never demanded a

car. It is pertinent to note that Ext.P88(b) conversation was even prior to the marriage. If at all there was no demand, prior to the marriage, the subsequent conduct from the part of the appellant, as evidenced from the documents and depositions of witnesses, will clearly show that after the marriage, he was abusing and assaulting the deceased on account of the car given and the deficit of gold ornaments given from her family.

16. Since the major punishment imposed on the applicant/appellant is under Section 304B of the IPC, for the limited purpose of this Crl.M.A., we may see whether there is any patent infirmity in the order of conviction under Section 304B of the IPC which renders it *prima facie* erroneous.

17. In **State of Madhya Pradesh v. Jogendra and Another** reported in [(2022) 5 SCC 401], the Apex Court held as follows:

"9. The most fundamental constituent for attracting the provisions of Section 304-B IPC is that the death of the woman must be a dowry death. The ingredients for making out an offence under Section 304-B have been reiterated in several rulings of this Court. Four prerequisites for convicting an accused for the offence punishable under Section 304-B are as follows:

(i) that the death of a woman must have been caused by burns or bodily injury or occurred otherwise than under normal circumstance;

(ii) that such a death must have occurred within a period of seven years of her marriage;

(iii) that the woman must have been subjected to cruelty or harassment at the hands of her husband, soon before her death; and

(iv) that such a cruelty or harassment must have been for or related to any demand for dowry.

17. In the above context, we may usefully refer to a recent decision of a three-Judge Bench of this Court in Gurmeet 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-B IPC where the law on Section 304-B IPC 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-B IPC. 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-B IPC 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)

18. Now let us go to Section 2 definition of 'Dowry', in the Dowry Prohibition Act 1961, which reads as follows:

"2. Definition of "dowry". —*In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—*

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

*at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. [***]*

Explanation II.— The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860)."

19. The definition itself shows that any property or valuable security, given or agreed to be given either directly or indirectly, by one party to the marriage to the other party to the marriage or by parents of either parties to the marriage or by any other person, to either party to the marriage or to any other person **at or before, or any time after the marriage** in connection with the marriage of the said parties is dowry. So even if there was no property or valuable security given or agreed to be given at or before the marriage, it can

be even **at any time after the marriage** also.

20. There need not be any agreement for giving the dowry as laid down by the Apex Court in **State of A.P. v. Raj Gopal Asawa and Another** [(2004) 4 SCC 470]. The argument that there has to be an agreement at the time of marriage, in view of the words, "**agreed to be given**" occurring in Section 2 of the Dowry Prohibition Act, and in the absence of any such evidence, it would not constitute a dowry is not tenable since the amended definition of dowry in Section 2 of the Act, includes not only the period, before and at the time of marriage, but also the period subsequent to the marriage. In the case on hand, even if there was no demand for dowry before or at the time of marriage, as pleaded by the applicant/appellant, the subsequent demand made by him is sufficient to attract the definition of dowry under Section 2 of the Dowry Prohibition Act, 1961.

21. There is no dispute with respect to the fact that Smt.Vismaya, the wife of the applicant/appellant, died otherwise than under normal circumstances and the death occurred within a period of seven years of her marriage.

22. The third limb that, Smt.Vismaya was subjected to cruelty or harassment at the hands of her husband also is *prima facie* proved through the oral and documentary evidence relied on by prosecution. PW11- the father of the applicant/appellant is admitting that he had given warning to his son, regarding his quarrel with the

deceased, and he is even admitting the physical assault, made by his son towards the deceased. But, according to him, those incidents have no proximity with the date of incident. According to him, after Smt.Vismaya came back to her matrimonial home on 17.03.2021, there was no quarrel between herself and the applicant/appellant. But, Ext.P87(r), Ext.P87(v), Ext.P87(w), Ext.P87(x), Ext.P87(aa), Ext.P87(ac), Ext.P87(ad), Ext.P87(ag), Ext.P87(aj) to Ext.P87(al), Ext.P87(a) to Ext.P87(f), Ext.P87(aq), Ext.P10 to Ext.P12 and Ext.P90(a) are all after 17.03.2021 i.e., after she came back to her matrimonial home. So that contention is not tenable.

23. Regarding the proximity of the harassment, in **Surinder Singh v. State of Haryana** [(2014) 4 SCC 129], the Apex Court observed in paragraph 17 of that judgment, which reads as follows:

"17. Thus, the words "soon before" appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words "soon before" is, therefore, important. The question is how "soon before"? This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman.

Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, "soon before" is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death."

24. In **Kans Raj v. State of Punjab** [(2000) 5 SCC 207], the Apex Court held in paragraph 15 of that judgment, as extracted below:

"15. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" 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. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. 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. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. 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. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

25. In **Preet Pal Singh v. State of Uttar Pradesh and Another** [(2020) 8 SCC 645], the Apex Court held that:

"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. [(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."

26. In **Preet Pal Singh's** case cited (*supra*), the Apex Court further held that discretion to be exercised judicially and not in a casual manner, while suspending the sentence and releasing the convict on bail, pending appeal. Even though detailed examination of merits of case may not be required while considering application for bail; but at the same time, exercise of jurisdiction has to be based on

well settled principles and in a judicious manner and not as a matter of course.

27. The nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence and its social impact are all to be looked into, while considering an application for suspension of sentence and to release the accused on bail. The appellate court is only to examine if there is patent infirmity in the order of conviction, which renders the order of conviction *prima facie* erroneous, while considering an application for sentence suspension.

28. The atrocities against women in their matrimonial homes are on the rise, and women committing suicide unable to bear the cruelty and harassment on demand of dowry are also rampant.

29. In the case on hand, a young lady, aged 23, had to commit suicide because of the continuous harassment and illtreatment extended to her, by her husband, on account of demand for a car of his choice and the gold ornaments, which was found in deficit than stated to be given from her family. She was very much intending to become a Doctor by completing her BAMS course and also to have a baby from her husband. The story put forward by the applicant/appellant that her father did not respond to her messages, menstruation against her expectation of pregnancy etc. are not sufficient enough, in normal human parlance, for a 23 year old girl, to end her life, if she was living happily with her husband.

The appreciation of evidence by the trial court in the light of available facts and circumstances will not show any patent infirmity in the order of conviction to make it *prima facie* erroneous.

30. While enacting Section 304B of the IPC, the Legislature strongly intended to curb the social evil of dowry demand. Section 2 of the Dowry Prohibition Act was amended with effect from 19.11.1986, and Section 304B dowry death was introduced in the Indian Penal Code with effect from the very same day, i.e., on 19.11.1986. Section 113 B presumption as to dowry death was also introduced in the Indian Evidence Act, 1872, on the same day i.e., 19.11.1986. So the Legislative intent in bringing out these amendments in all the three statutes simultaneously will show the strong desire to eradicate the social evil of dowry death from the society using the iron hands of law.

31. Taking into account the nature of accusation, seriousness of the offence and also its social impact, this is not a fit case warranting suspension of sentence. Moreover, the presumption of innocence goes with the conviction and sentence. There is no patent infirmity in the order of conviction to render it *prima facie* erroneous. Crl.A.No.1016 of 2022 filed by the prosecution, and Crl.A.(V) No.30 of 2022 filed by the father of the victim for enhancement of the sentence and compensation are pending consideration of this Court. Pending appeal, if the sentence is suspended so as to release the applicant/appellant on bail, it will send a wrong message to the

society. For all these reasons, we are not inclined to allow this application.

32. It is made clear that the observations and findings in this order are for the limited purpose of this application only, and it will not in any way affect the contentions to be taken by the applicant/appellant in the above appeals.

In the result, Crl.M.A.No.1 of 2022 stands dismissed.

Hand over to both sides.

Sd/-



**ALEXANDER THOMAS
JUDGE**

Sd/-

**SOPHY THOMAS
JUDGE**