

Can't Let Them Suffer "Rough Side Of Life": JKL High Court Grants Bail To Father Of Two Minors Booked For Murder Of Their Mother

2023 LiveLaw (JKL) 17

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU
RAHUL BHARTI; J.**

Bail App No. 345/2022; 30.01.2023

Sham Lal versus UT of J&K

Petitioner(s) Through: Mr. M. K. Bhardwaj, Sr. Advocate with Mr. Gagan Kohli, Advocate

Heard learned counsel for the petitioner.

- 1.** The petitioner is in judicial custody as being an under-trial in a criminal case pending trial before the court of the learned Sessions Judge, Samba. The petitioner is one of the two accused persons in the criminal case presented on 28.08.2021 before the trial Court by reference to FIR no. 43/2021 for alleged commission of offences under section 304-B/201 of the Indian Penal Code registered with the Police Station Ramgarh.
- 2.** The petitioner, along with the co-accused namely Chaman Lal has been booked in relation to the death of his wife-Tripta Devi on 26.05.2021. It was at the instance of the complaint of the deceased-Tripta Devi's brother Ashok Singh alleging foul play in the death of Tripta Devi that FIR no. 43/2021 had come to be registered resulting in arrest of the petitioner and the other co-accused on 30.05.2021 where after the two came to be arraigned and stand trial before the Court of learned Sessions Judge Samba.
- 3.** On behalf of the two accused persons a bail application came to be filed on 10.11.2021 before the trial Court of learned Sessions Judge Samba, wherein vide an order dated 14.09.2022 the trial court of learned Sessions Judge Samba came to grant bail in favour of coaccused namely Chaman Lal but declined to let the petitioner be on bail.
- 4.** The petitioner was married to Tripta Devi in the year 2013 and out of said wedlock the petitioner has two minor daughters. The petitioner is a villager by background and is thirty six years old. Upon the death of his wife and his consequent booking in the criminal case resulting in his continuing custody with effect from 30.05.2021, the petitioner's two minor daughters are left with no caretakers except the relatives that too of the petitioner's side and this is the ground which has been heavily pleaded by the petitioner for the indulgence of this Court in considering the grant of bail.
- 5.** This Court cannot escape from the sensitivity of the situation that two minor daughters while on the one hand had come to suffer loss of their mother for all times to come and on the other hand are suffering the absence of their father who by virtue of his detainment, is not to be assumed to be able to attend to their welfare and well being in terms of needs of their daily life. The concern of the petitioner thus becomes genuine particularly in the background of the fact that the marriage of the petitioner with Tripta Devi had lasted more than seven years so as to be free from presumption of guilt against him with respect to the alleged underlying cause of death of his wife-Tripta Devi. Thus, for the sake of ensuring that the two minor daughters of the petitioner suffer no neglect and denial of protection and care quo their person, the demand of justice calls for grant of bail in favour of the petitioner bearing the legal dictum in mind that the petitioner is presumed to be innocent till proved guilty and that presumption can come into play to enable this Court to grant bail in favour of the petitioner for the purpose of enabling him to resume his occupation for earning his livelihood for the purpose of providing care and custody of his

two minor daughters who otherwise are going to suffer rough side of life for no fault on their part as long as the petitioner continue to suffer custody in connection with his trial.

6. Thus, the petitioner is held entitled to and is, hereby, granted bail pending trial of the criminal case titled Union Territory of J&K Vs Sham Lal and another against him before the Court of Sessions Judge, Samba. The grant of bail is subject to furnishing of bond, personal as well as surety, to the extent of Rs.50,000/- (Rupees Fifty Thousand). During the period of his release on bail, the petitioner shall be bound to attend regularly the dates of hearing in the criminal case the trial of which is going on before the Court of learned Sessions Judge, Samba and shall not in any manner influence/intimidate any unexamined prosecution witness. The petitioner shall not leave the territorial jurisdiction of the Union Territory of the Jammu & Kashmir without due permission from the Sessions Court, Samba. The Court of learned Sessions Judge Samba to issue requisite direction to the Superintendent of the concerned jail to release the petitioner on bail by accepting the bond, personal as well of surety, for the amount as mentioned above.

7. Petition is, accordingly, ***disposed of***.

A copy of this order be sent to the Sessions Judge, Samba for notice.

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