

**31.03.2021**

**Present:** **Mr. Yogendra Adari, Ld. APP for the State.**  
**Mr. Shailender Babbar, Mr. Vivek Mohla and Mr. Ravinder**  
**Sharma, Counsels for applicant/accused** **Suman Kumari.**  
**IO Inspector Sanjay Kumar is present.**

1. Submissions heard on the application for bail moved on behalf of accused Suman Kumar under section 439 Cr. PC.
2. The accused is in JC since 09.12.2020.
3. The chargesheet has been filed under sections 498A/304B/34 IPC and is assigned for trial to this court. Charge is yet to be framed.
4. The allegations emanate from the FIR dated 05.12.2020 registered on the statement of the father of the deceased qua her demise on 01.12.2020. The complainant alleged that his daughter, who had been married to accused Tinku on 11.07.2019, was subjected to repeated demands for a motorcycle by Tinku, his younger brother namely Sunil, his elder brother namely Deepu, sister-in-law (*jethani*) namely Suman i.e. the present applicant and father-in-law namely Dilip Chaudhary. The complainant could not provide the motorcycle for want of resources which led to the accused persons repeatedly beating up his daughter. She was allegedly not provided proper food and rather forced to consume non vegetarian food.
5. It was further alleged that she was often kept hungry for four to five days. The specific allegation against the present applicant/accused namely Suman Kumari was that she had intended to get her sister married to accused Tinku and thus forcibly made the deceased consume a medicine to cause abortion of a three month old foetus.
6. The deceased was found hanging with the ceiling fan using a cloth (*gamcha*) and so discovered by her husband i.e. accused Tinku on 01.12.2020.
7. The ld counsel for the accused has prayed for her release on bail on the submission

that the contents of the FIR do not reveal a case of harassment for dowry “soon before her death” and that the documents filed with the chargesheet do not substantiate the allegations of forcible abortion of the foetus of the deceased by the present accused.

8. It has next been highlighted by the counsel for the accused that the court of committal had infact, on an application moved by the accused herself, directed further investigation into the possible extra marital affair of the deceased with another person being the cause for her to commit suicide. The counsel agitated that pending the filing of a supplementary chargesheet in this regard, the accused ought not to be subjected to further detention.

9. It was pointed out by the counsel that applicant/accused Suman Kumari has a son aged 21 months who is also with her at Central Jail, Tihar on account of her being in judicial custody. The counsel canvassed the release of the accused on the ground of enabling the child to come out of the jail environment.

10. The application has been opposed by the Ld. APP for the State, who, with the assistance of the IO, submitted that specific allegations of a demand for a motorcycle, beatings inflicted upon the deceased and forcible abortion had been made by the father of the deceased against the present applicant/accused. The prosecutor argued that the contentions raised by the defence counsel were misplaced as even the charge was yet to be framed and the court cannot form a view on the allegations on the basis of further investigation which was yet to be completed.

11. While agreeing that the child of the applicant/accused is quite young in age, the ld APP submitted that he had not been separated from his mother and was in a safe environment in her company.

12. The court has considered the chargesheet and the submissions made by the respective counsels.

13. Apparently, the allegations relate to demand and harassment with a view to obtaining dowry inter alia a motorcycle and also beatings inflicted in this context. The allegations also relate to forcible administration of a pill to cause abortion of the foetus of the deceased. The pleas raised by the ld counsel for the accused with respect to the merits of a charge under section 304 B IPC would be considered by the court at the stage of framing of the

charge. Whether, for purpose of framing of charge, the allegations constitute harassment for dowry “soon before her death” is therefore a question/stage yet to be reached in the trial. The specific allegations made in the FIR had been forwarded in the chargesheet under section 498A/304BIPC/34 IPC. Thus, considering the nature of the allegations against all accused persons, the gravity of the same cannot be discounted and does operate as a dissuading consideration in the matter of bail being granted to the present applicant/accused.

14. The court is, however, inclined to view with greater appreciation and empathy the ground for bail which shines light upon the often forgotten victims of incarceration viz the children of imprisoned parents.

15. A court of law is a forum where the right to liberty has to often yield to the rule of law and persons accused of the commission of offences may find their applications for grant of bail declined for various reasons. Denial of bail to such persons, especially women does, however, often operate as *de facto* detention of their infant/toddler wards. Being neither the subject of trial nor required to be in detention for any reason, such children still languish in jail for terms co-terminus with the period of detention of their mother.

16. Now, it bears mention that India is a signatory to the United Nations Convention on the Rights of the Child, 1989 and has even legislated its Juvenile Justice (Care and Protection of Children) Act, 2015 to give effect to the said Convention and other International Rules and Conventions relating to children. The Convention inter alia Article 37 mandates that detention of children should be only a matter of last resort and for the shortest period of time. Even if such detention is required, the said Article mandates that children should be separated from adults.

17. The primary consideration of the best interests of the child in all actions concerning children taken by courts of law, enunciated in Article 3 of the Convention, also finds recognition in the JJ Act, 2015 through section 3 which requires that all decisions regarding the child shall be based on the primary consideration that they are in the best interests of the child and to help the child to develop full potential. Section 3 also advocates institutionalization of the child as a step of last resort. The same provision even mandates that a child in the Juvenile Justice system should be restored to the same socio - economic

status and cultural status that he was in before coming under the purview of this Act.

18. The child of the applicant/accused is 21 months old. He has not yet seen two years in this world. Not being a child in conflict with law or a child in need of care and protection within the meaning of the J J Act, it may be a view too myopic and pedantic to take that the child is not in the Juvenile Justice system. The court would pose to itself whether for reason alone of not conforming to the above descriptions as a CCL or CNCP, the child can be denied the protection of the principles governing the child rights regime viz the UN Convention on the rights of the child and the Juvenile Justice Act. The answer is an unequivocal negation of such a proposition. Being only the son of an accused and yet suffering the *de facto* detention, the child must not suffer rigorous any more stringent than a child who would qualify as a CCL or a CNCP. Yet, the child finds himself incarcerated for the alleged actions of his mother.

19. It bears empathetic but emphatic mention that the continued detention of a child of a tender age, even if in the custody of the mother i.e. the applicant/accused would have a foreseeable adverse influence on his socialisation, sensory enrichment and over all physical and mental development. The options for pre-school and other educational enhancement would necessarily be restricted inside the Central Jail, Tihar. Since the trial has not even commenced and is likely to take a length of time to complete, the son of the accused, barely two years in age, cannot be condemned to spending his early childhood in jail. Such a fate would be a violation of his right to healthy development as an individual.

20. Thus, in recognition of the rights of the child and observing that a system which is predicated on the presumption of innocence of the accused should not subject the child of such an accused to detention without cause, the court finds it fit that the applicant/accused is granted liberty to face trial as a free person. Bail to the applicant/accused mother in the present facts is infact a release of her little child to freedom.

21. Applicant/accused Suman Kumari is admitted to bail on furnishing of PB & SB in sum of Rs. 30,000/- each.

22. Let a copy of this order be given dasti to the counsel for the accused and be also sent to the Superintendent, Central Jail, Tihar.

**(Vishal Gogne)**  
**ASJ-04(SW)/Dwarka Courts**  
**31.03.2021**