



2026:AHC:151064

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 22566 of 2026

Sarvesh Alias Chhotu Alias Chhotelal

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s)	: Suneel Kumar
Counsel for Opposite Party(s)	: G.A.

Court No. - 66

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. Heard Mr. Suneel Kumar, learned counsel for the applicant, Ms. Mayuri Mehrotra, learned State Law Officer for the State, Mr. Rakesh Kumar Mishra, learned A.G.A. for the State and perused the record.

2. The instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No.24 of 2026, under Sections 85, 80(2) of BNS and Section 3/4 of the Dowry Prohibition Act, Police Station-Madhautanda, District-Pilibhit.

3. This matter was heard on 06.07.2026, on that date, counsel for the applicant submitted that the deceased was his second wife as the

presumption of Section 118 of the BSA are not attracted against the applicant, therefore, the applicant is entitled to be released on bail.

4. Considering the above submission, a preliminary legal issue was framed whether a person who performed a second marriage during the lifetime of the first wife would come within the definition of husband for the purpose of Section 80 BNS as well as Section 118 of BSA. On that date, considering the legal issue, this Court directed Mr. Rakesh Kumar Mishra, learned A.G.A. as well as Ms. Mayuri Mehrotra, learned State Law Officer to prepare the case and address the Court on the issue on the next date.

5. Today, Ms. Mayuri Mehrotra, learned State Law Officer submitted that this issue was considered by Karnataka High Court in Criminal Application under Section 528 No.8134 of 2024 (Dr. Lokesh B H vs. State of Karnataka), wherein the Court after framing the specific issue whether an offence under Section 498-A could be committed only a valid marriage, relationship or could it be committed or void or voidable marriage or relationship in the nature of marriage like live in relationship.

6. The Hon'ble Single Bench of the Karnataka High Court, after considering the issue, observed that the expression of husband under Section 498-A cannot formed again in a legal marriage to extent to enter into a marital relationship, which is void for voidable as also to live in relationship, which bears the attributes of marriage so long as essential ingredients of cruelty as defined in section are satisfactory. This judgment of the Karnataka High Court was challenged before the Apex Court through SPL Criminal No. 2240-2241 of 2026. The Apex Court,

first wife will also come within the definition of husband for the purpose of Section 498-A. In this judgment, the co-ordinate bench of this Court also relied upon the judgment of the Apex Court in the case of **Reema Aggarwal v. Anupam and others (2004) 3 SCC 199**.

8. Mr. Rakesh Kumar Mishra, learned A.G.A., also submitted that two husbands have not been defined in statute; however, domestic relationship has been defined under Section 2(f) of the Prevention of women from Domestic Violence Act 2005 (hereinafter will be referred as Domestic violence Act) and as per the definition, even if a person male or female has been residing in share household and related by marriage or through relationship in the nature of marriage. This shows that even if two persons are living together in a void marital relationship, they will be treated as husband and wife for the purpose of Section 80 BSA 2023. They will be treated as husband and wife. Section 2(f) of the Domestic Violence Act is quoted as under:

"domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family".

9. After considering the submissions of learned counsel for the parties, the legal question which has to be decided is:

Whether any person who performed a second marriage during the lifetime of his first wife would come within the definition of "husband" for the purpose of Sections 80 and 85 of the Bharatiya Nyaya Sanhita, 2023 with regard to the second wife?

10. To decide the aforesaid issue, it would be appropriate to quote

shall be called "dowry death", and such husband or relative shall be deemed to have caused her death."

11. From the perusal of Section 80 of the BNS, it is clear that the cruelty or harassment by the husband to the woman should be **for, or in connection with, any demand for dowry**. Likewise, Section 85 of the BNS also contemplates cruelty by the husband or his relatives. The word "dowry" has been defined under Section 2 of the Dowry Prohibition Act, 1961. As per Section 2 of the Dowry Prohibition Act, 1961, "dowry" means any property or valuable security given or agreed to be given by one party to the marriage to the other party to the marriage or by the parents of either the bride or the bridegroom 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**, except dower or *mehr* in the case of persons to whom the Muslim Personal Law (Shariat) applies. Section 2 of the Dowry Prohibition Act, 1961 is being quoted as under:

"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 1[or any time after the marriage] 2[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."

12. From the perusal of Section 2 of the Dowry Prohibition Act, 1961, it is clear that dowry means any property or valuable security which is related to or given in connection with the marriage of the said parties. Therefore, if any demand is made by one party from the other party

BNS, which includes any wilful conduct of the husband or his relative which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or physical or mental health of the woman, even though there is no unlawful demand.

14. Apart from this, harassment of a woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security, or on account of failure by the woman or her relative to meet such demand, also amounts to cruelty. Such unlawful demand of property or valuable security is not necessarily with regard to dowry. Therefore, cruelty committed upon a woman by her husband may be an offence under Section 85 of the BNS even though the same is not with regard to dowry, as observed by the Hon'ble Apex Court in **Aluri Venkata Ramana v. Aluri Thirupathi Rao**, SLP (Crl.) No. 9243 of 2024 / Criminal Appeal No. 5239 of 2024, decided on 12.12.2024.

15. Therefore, the question arises whether a person who performed a second marriage during the lifetime of his first wife with a woman having knowledge of and consenting to the subsistence of the first marriage would come within the **ambit of the expression "husband"** for the purpose of Sections 80 and 85 of the BNS.

16. The Hon'ble Supreme Court in case **Reema Aggarwal v. Anupam and others (2004) 3 SCC 199** considered all these issues and observed that while interpreting the word "husband" mentioned under Sections 498A and 304B I.P.C miship rule on handerson's case can be pressed into service with a view to press the miship which would suppress literal rule being allowed to cover the field and further observed that it would be appropriate to construe the expression "husband" to cover a husband

limited purpose of Section 498A and 304B I.P.C. Paragraph 18 of **Reema Agarwal (supra)** is being quoted as under:

"18. The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B-IPC and Section 113B of the Indian Evidence Act, 1872 (for short the 'Evidence Act') were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction". It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed

purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

17. This issue was considered by the Hon'ble Apex Court in **Shivcharan Lal Verma v. State of Madhya Pradesh, reported in (2007) 15 SCC 369**, wherein a Bench of three Hon'ble Judges observed that where the marriage itself is null and void, the prosecution under Section 498-A IPC against the husband is not maintainable at the instance of the alleged wife in respect of cruelty meted out to her. Paragraph 2 of **Shivcharan Lal Verma (supra)** is being quoted as under:

"2. This matter had not been taken up for hearing for this length of time as the judgment of this Court holding Section 306 IPC to be unconstitutional was under reconsideration by the Constitution Bench. The Constitution Bench [Ed.: Gian Kaur v. State of Punjab, (1996) 2 SCC 648: 1996 SCC (Cri) 374] finally disposed of the matter in Criminal Appeal No. 274 of 1984 and batch and set aside the earlier judgment [Ed.: P. Rathinam v. Union of India, (1994) 3 SCC 394: 1994 SCC (Cri) 740] of this Court and held that Section 306 is constitutionally valid. In view of the aforesaid Constitution Bench decision two questions arise for consideration in this appeal. One, whether the prosecution under Section 498-A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr Khanduja, learned counsel for the appellant so far as conviction under Section 498-A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of a valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498-A IPC. But so far as the conviction under Section 306 is concerned, the evidence of the three witnesses already referred to, makes it absolutely clear that it is on account of torture by both Kalindi and Shiv Charan that Mohini committed suicide inside the house of Shiv Charan in another room. The learned Sessions Judge as well as the High

reduce the sentence to five years. This appeal is accordingly disposed of. Bail bonds of the appellants would stand cancelled and they must surrender to undergo the remaining period of sentence."

18. The aforesaid judgment was considered by the Hon'ble Apex Court in **P. Sivakumar v. State, 2023 SCC OnLine SC 1737**, and the Hon'ble Apex Court observed that where the second marriage is void, the alleged husband of such second marriage cannot be convicted under Section 498-A IPC (corresponding to Section 85 of the BNS). Paragraph 7 of **P. Sivakumar (supra)** is being quoted as under:

"7. Undisputedly, the marriage between the appellant No. 1 and PW-1 has been found to be null and void. As such the conviction under Section 498-A IPC would not be sustainable in view of the judgment of this Court in the case Shivcharan Lal Verma's case supra. So far as the conviction under Sections 3 and 4 of the Dowry Prohibition Act is concerned, the learned trial Judge by an elaborate reasoning, arrived at after appreciation of evidence, has found that the prosecution has failed to prove the case beyond reasonable doubt. In an appeal/revision, the High court could have set aside the order of acquittal only if the findings as recorded by the trial Court were perverse or impossible."

19. This issue was also considered by the Allahabad High Court in the case of **Akhilesh Kesari and 3 others v. State of U.P. and another** in Application u/s 482 No.38288 of 2023 dated 28.03.2024, wherein the Court observed that for interpreting the word "husband" enshrined under Section 498A, strict interpretation is required being a penal provision, therefore, proceedings under Section 498A I.P.C. will not be maintainable against an alleged husband of marriage which is itself void. Paragraph 10 of **Akhilesh Kesari (supra)** is being quoted as under:

"10. From the perusal of the judgments mentioned above of the Apex Court, it is clear that strict interpretation is required when interpreting the word husband in Section 498-A I.P.C. as the I.P.C. is a penal provision, not beneficial legislation where the liberal interpretation is

view to the judgement of **Akhilesh Kesari (supra)** and it was observed that to attract the provision of Sections 304B and 498B I.P.C., it is sufficient to show that the victim women and accused husband were residing as a husband and wife at the relevant point of time. As the validity of the marriage cannot be decided in criminal proceedings. Paragraph 8 of **Adarsh Yadav (supra)** is being quoted as under:

"8. Following the aforesaid judgment, the Hon'ble Chhattisgarh High Court in case of Mohitram vs. State of Chhattisgarh 2004(3)MPHT22(CG) has held that the intention of legislature behind inserting the provisions of Section - 304-B I.P.C. was that husband and his relatives, who are responsible for the dowry death of a woman should be brought into mischief of dowry death whether the marriage in question was valid or not. It was observed that in order to attract provisions of Section - 304-B and 498-A of I.P.C., it is sufficient to show that victim woman and accused husband were residing as husband and wife at the relevant point of time. In the instant case, for the sake of arguments even if it is assumed that the deceased does not fall within the ambit of legally wedded wife, there is ample evidence on record that applicant and deceased were residing together as husband and wife at the relevant point of time."

21. A single Bench of the Karnataka High Court in the case of **Dr. Lokesh B H and others v. State of Karnatka (2025) SCC Online 21706**, a view was taken that the expression "husband" under Section 498A I.P.C. is not confined to a man to in a legally valid marriage, but explains to one who enters into a marital relationship which is void or voidable, as also to a live-in-relationship which bears the attributes of marriage. However, this judgment was challenged before the Apex Court in S.L.P. No.2240-2241 of 2026, in which judgment was reserved on 20.05.2026 and further proceedings pending before the District Court were stayed.

22 From the above mentioned judgments, it is clear that though in the

handerson's case, therefore, the word "husband" should not be strictly construed but it should be interpreted in such a manner even a person having living spouse started living with another women or contract marriage with with a women ostensibly cohabited with such women would fall within the category of husband for the purpose of Section 304B and 498A I.P.C. However, the three-judge bench of the Apex Court in the case of **Shivcharan Lal Verma (supra) (2007)** took a view that the second marriage is void; therefore, the person living with a woman in a second marriage will not come within the premises of husband for the purpose of Section 304B and 498A I.P.C. This three-judge bench judgment was again relied on by the Hon. Apex Court in **P. Shivakumar v. State, 2023 (supra)**, wherein it was observed that even if a marriage is null and void, then the alleged husband cannot be convicted under Section 498A I.P.C.

23. This Court is of the view that though there was a detailed reasoning in the case of **Reema Aggarwal (supra)** for including the alleged husband of void marriage for the purpose of Section 498A/ 304B I.P.C. but subsequent judgement of larger bench in the case of **Shivcharan Lal Verma (supra)** took a different view, therefore, that must prevail and the same was again reiterated in the year 2023 by the Apex Court in the case of **P. Shivakumar v. State, 2023 (supra)**.

24. The word "husband" has not been defined in any statute, but as per the Black Law Dictionary, the word "husband" means a married man who has a lawful spouse living; therefore, a person who does not have a lawful spouse living in the marriage in question will not be included in the category of husband.

be strictly interpreted. Para 24 of the **M/s. Balaji Traders (supra)** is being quoted as under:

"24. The scope of the provision cannot be extended by reading into it words which are not there. Section 387IPC, being a penal provision, has to be strictly interpreted, and no condition/essential ingredient can be read into it that the statute/section does not prescribe. Since there is no ambiguity in the ingredients of Section 387IPC, the observations of Tolaram Relumal [Tolaram Relumal v. State of Bombay, (1954) 1 SCC 961] as contended by the learned counsel appearing for Respondent 2 would not come to his rescue."

26. It is also settled law that if there are two views possible, then the Court must lean towards that construction which exempts the subject from penalty when one imposes a penalty. This issue was considered by the Apex Court in the case of **Tolaram Relumal and another v. State of Bombay (1954) 1 SCC 961**. Para 8 of the **Tolaram Relumal (supra)** is being quoted as under:

"The question that needs our determination in such a situation is whether Section 18(1) makes punishable receipt of money at a moment of time when the lease had not come into existence, and when there was a possibility that the contemplated lease might never come into existence. It may be here observed that the provisions of Section 18(1) are penal in nature and it is a well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. As pointed out by Lord Macmillan in London and North Eastern Railway Co. v. Berriman:

"where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language."

27. The Hon. Apex Court in the case of **M. Ravindran v. Intelligence**

"17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused."

28. In view of the above analysis, it is clear that the presumption of dowry death in case of unnatural death within seven years of marriage as per Section 80 B.N.S. (Section 304B I.P.C.) read with Section 118 of B.S.A. should be interpreted strictly in such a manner which favours to an accused, therefore, this Court is of the view that the word "husband" in section 80 BNS as well as Section 85 B.N.S. will cover person only when he is legally married to a women, not the person whose marriage is itself void with a women. This view is also in consonance with a view taken by a three-judge bench of the Apex Court in the case of **Shivcharan Lal Verma (supra)**. However, this Court further observes that in case there is a doubt about the first marriage, then a person living as "husband" in an alleged second marriage will be covered in the definition of husband for the purpose of section 80 and 85 BNS, because it is not possible in criminal proceedings to determine the issue of validity of marriage. Similarly when a person performed second marriage to a woman without disclosing his validly married living spouse and continued to live with his second wife as her husband and second wife is also not aware about this fact till commission of this offence, in that case also he will be deemed as husband for the purpose of section 80 and 85 of BSA as he can not be allowed to take advantage of his wrong.

29. However, it is mentioned here that this second marriage is void if

- (iii) Christian Marriage Act, 1872;
- (iv) Parsi Marriage and Divorce Act, 1936;
- (v) Hindu Marriage Act, 1955.

30. Therefore, if the first marriage is performed under any of the above mentioned acts, then the second marriage would be void. However, in the case of Muslim, if the marriage is performed as per Sharia law, second, third and fourth marriage shall also be valid and in such cases if a Muslim person is living as a husband whether with second, third or fourth wife would also cover under the definition of husband for the purposes of Section 80 and 85 BNS.

(Arun Kumar Singh Deshwal,J.)

July 22, 2026

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After delivery of the judgment on preliminary legal issue this court further proceeds to decide this bail on merit.

1. Learned counsel for the applicant submitted that it is admitted to the first informant that the marriage of the applicant with the deceased was the second marriage of the applicant, solemnized during the subsistence of his first marriage, and his first wife was alive and residing with them. Therefore, as the marriage itself was void and the issue has already been decided in the first part of this judgment, the applicant would not come within the definition of "husband", and consequently, the provisions of Sections 80 and 85 of BNS cannot be invoked against him. It is further

citizen and has been languishing in jail since 28.01.2026. In case he is granted bail, he will not misuse the liberty of bail and shall cooperate in the trial proceedings.

2. Per contra, learned State Law Officer for the State has vehemently opposed the prayer for bail but could not dispute the aforesaid facts.

3. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of offence, evidence, complicity of the accused and taking into account overcrowded jails and heavy pendency of criminal cases before the trial courts as well as considering the mandate of the judgement of the Apex Court in the case of **Kapil Wadhawan vs Central Bureau of Investigation** reported in **2025 SCC OnLine SC 3038** as well as guideline of this Court in the case of **Maya Tiwari Vs. State of U.P., 2024 SCC Online All 6765** regarding grant of bail and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail. Accordingly, the present application is **allowed**.

4. Let the applicant- **Sarvesh Alias Chhotu Alias Chhotelal**, involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

i. The applicant 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 or tamper with the evidence.

ii. The applicant shall cooperate in the trial/investigation sincerely

iv. The applicant shall attend in accordance with the conditions of the bond executed by him.

5. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

6. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

7. Verification of mobile number and Aadhaar card of the applicant as well as sureties should be verified by the court concerned.

8. It is made clear that the applicant shall be released on the basis of computer generated copy of this order, downloaded from the official website of High Court Allahabad and verified by the concerned counsel with the undertaking that the certified copy will be filed within 15 days.

9. It is further directed that the trial court shall send the release order to the concerned jail through Bail Order Management System (BOMS) to ensure early release of the applicant.

10. Office is directed to send a copy of this order to the applicant through **Jail Superintendent, Pilibhit** via e-mail or on e-prison portal and Trial Court via e-mode within 24 hours in compliance of the order of the Apex Court in the case of **Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No.4 of 2021 decided on 31.01.2023** reported in **(2024) 10 SCC 685** as well as **Pila Pahan@Peela Pahan and others Vs. State of Jharkhand and another, in Writ Petition (Criminal) No. 169 of 2025, decided on 29.05.2026.**

11. Application, if any, stands **disposed of**.