

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRMININAL APPLICATION NO.3426 OF 2015

Kailash s/o Munjaji Sarkate,
Age 30 years, Occu. Agri.,
R/o Samaga, Taluka and
District Hingoli
(At present is in jail)

..Applicant
(Orig.accused/applicant)

Versus

The State of Maharashtra

..Respondent

CORAM : N.W. SAMBRE, J.

DATE : 21st August 2015

PER COURT

Heard.

2. Pursuant to a complaint lodged by Ramesh Rangrao Jadhav, father of deceased Kalpana, offence vide Crime No.4/2015 came to be registered at Basamba Police Station, District Hingoli against the present applicant – husband of deceased Kalpana, her father-in-law and her husband's second wife Seema on 29th January 2015, punishable under Sections 302, 304-B, 494, 498-A, 120-B read with Sec.34 of the Indian Penal Code.

3. So far as the accused No.2, 3 and 4 are concerned, they are already released on bail and the investigation in the matter is complete, as the charge-sheet is already filed.

4. Mr Dhorde, learned Senior Counsel for the applicant, while making out a case for grant of regular bail would urge that the applicant got married with Kalpana in 2011 and in view of differences,

the applicant got married for the second time in 2013 with one Seema. In view of resolving the dispute in between the parties, both the wives i.e. Kalpana and second wife of applicant, Seema started residing with the applicant.

5. On 28th January 2015, when Kalpana left for field, it was noted by the applicant that she died because of hanging resulting into summoning Subhash, the maternal uncle of Kalpana, who is residing in the same village. Upon report of Subhash, A.D. came to be registered on 29th January 2015. The present applicant was arrested on 31st January 2015.

6. Learned Counsel for the applicant fairly concedes that there is a seizure of poison at the behest of present applicant-accused from the manure pit which was located in his field. According to him, even if the case of the prosecution that Kalpana has died because of administering of poison is accepted, still it will be hard to believe that Kalpana was administered poison by the applicant. According to him, there is no evidence to that effect on record and medical evidence that speaks of death of Kalpana because of asphyxia, however, subsequently it was confirmed after receipt of viscera report that she died because of administering poison. He would urge that in case the poison was to be administered by an individual to Kalpana, the resistance would result in external injury on body of Kalpana and in absence thereof the applicant is entitled for release.

7. Learned A.P.P. would urge that there is a prima facie case as against the present applicant, as initially, show was made that

Kalpana died because of hanging, however, upon receipt of viscera report, it was disclosed that Kalpana died because of administering poison, which was recovered at the behest of applicant-accused, cannot be disbelieved. According to him, the non-noticing of any external injury can be an issue gone into at the stage of recording of evidence.

8. Upon considering the rival submissions, it is noticed that except the injuries which were caused because of hanging, no other external injury was noticed on the body of deceased Kalpana. Apart from above, it is required to be noted that at the relevant time, the fact about second marriage of applicant with Seema was well within the knowledge of deceased Kalpana, who started residing with applicant and Kalpana since 2013. It is further required to be noted that Subhash, the maternal uncle of deceased Kalpana is a resident of same village and at no point of time he has shown any adverse event qua the stay of Kalpana with the applicant-accused.

9. In view of above, in my opinion, it will be difficult to believe that the applicant has individually administered poison to deceased Kalpana. In view thereof, the applicant is entitled to be released on regular bail. As such, I proceed to pass the following order :

10. The applicant Kailash Munjaji Sarkate in connection with the crime referred to above, be released on bail, upon furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

11. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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