

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

CRIMINAL APPLICATION NO.5322 OF 2015

1. Kailas Sanduji Shivankar,
Age 27 years, Occu. Service
2. Jijabai Sanduji Shivankar,
Age 50 years, Occu. Household
3. Sanduji Asaram Shivankar,
Age 54 years, Occu. Service,

All r/o Ramnagar, Police Colony,
Jalna

..Applicants

Versus

- The State of Maharashtra

..Respondent

Mr Joydeep Chatterji, Advocate for applicants

Mr N.T. Bhagat, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 12th October 2015

PER COURT

Heard.

2. The applicant No.1 Kailas, who is from Police Department married to deceased Swati, daughter of one Ashok Vitthalrao Mathe. The applicant No.2 is mother of applicant No.1 Kailas and mother-in-law of deceased Swati, whereas applicant No.3 is the father-in-law of deceased Swati. Applicant No.1 Kailas and applicant No.3 Sanduji are employees of Police Department, posted at Jalna.

3. It is the case of the complainant, i.e. father of the deceased Swati that the present applicants, along with other five accused persons have subjected Swati to cruelty, upon non fulfillment of demand of dowry and she was accordingly set herself on fire.

4. Amongst, the persons named in the first information report, five persons are already released, who happened to be family members of the present applicants.

5. Mr Chatterji, learned Counsel for the applicants, while trying to make out the case for grant of pre-arrest bail would urge that the applicant Nos.1 and 3 are public servants. He would further urge that the involvement of the applicants in the alleged crime is false and it is clear case of suicide on the part of deceased Swati.

6. According to Mr Chatterji, the applicants are entitled to be released on pre-arrest bail, as they shall not run away from the investigation and shall attend the Court proceedings.

7. While opposing the present application, learned A.P.P. would urge that the application of the applicants be rejected in view of the fact that deceased Swati died within six months of her marriage. According to him, the death of Swati was within the knowledge of the applicants and apart from above, he would urge that the applicants' custodial interrogation is necessary for further investigation in the matter, in view of death of Swati within a period of about six months from the date of her marriage with Kailas. He would urge that the dying declarations which are recorded are required to be ignored.

8. Upon considering the rival submissions of the parties, it is required to be noted that from the record it depicts that deceased Swati set herself on fire on 10th September 2015 at her matrimonial house.

9. When she was hospitalized, two dying declarations came to be recorded, one by Investigating Officer and another by the Executive Magistrate. In both these dying declarations, she has specifically stated that she has committed suicide, as she was not able to carry out domestic work. There is a consistency in the dying declaration recorded by the Executive Magistrate and she has specifically stated that nobody is to be blamed for her death.

10. It is further required to be stated that the husband and the brother-in-law of the applicant Kailas have extinguished the fire by pouring water on the body of deceased Swati.

11. It is, after the death of Swati, the complainant i.e. father of deceased Swati lodged report on 15th September 2015 alleging about the illegal demand and about burning of his daughter. In his complaint, he has stated that deceased Swati has committed suicide as the demand of dowry was not fulfilled.

12. According to him, the said fact was narrated by Swati to him on 11th September 2015 when in fact Swati expired on 13th September 2015. The complainant being aware about the said fact, should have reported the said fact for recording the other dying declaration in the matter.

13. In the above referred background and particularly having regard to the fact that the other family members, who were implicated in the offence are already released on bail and the fact that the applicants

No.1 and 3 being public servants, there is hardly any likelihood that they would run away from the Court proceedings and applicant No.2 who is housewife and residing with the applicants, in my opinion, it will be appropriate to release the applicants on pre-arrest bail. Hence, I proceed to pass the following order :

(I) In the event of arrest of the applicants Kailas Sanduji Shivankar, Jijabai Sanduji Shivankar and Sanduji Asaram Shivankar in Crime No.247/2015 registered with Sadar Bazar Police Station, District Jalna, for the offence punishable under Sections 498-A, 306, 304 (B), 323, 504, 506 read with sec.34 of the Indian Penal Code, the applicants be released on bail, upon furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount each;

(II) The applicants shall keep themselves away from the jurisdiction of concerned Police Station till the investigation is complete and they shall only enter the jurisdiction of concerned Police Station for co-operating the investigation.

14. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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