

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

CRIMINAL APPLICATION NO. 5431 OF 2015

1. Dadarao s/o. Bhausahab Maind,
Age : 26 years, Occu. Agril.

2. Subhash s/o Bhausahab Maind,
Age : 23 years, Occu. Agril.,
Both R/o. Mauje Ganori,
Tq. Phulambri, Dist. Aurangabad. ... Applicants

VERSUS

The State of Maharashtra. ... Respondent

.....
Mr M. R. Jadhav, Advocate for the applicants
Mr U. S. Mote, APP for respondent-State
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CORAM : **INDIRA K. JAIN, J.**
DATE : **26TH NOVEMBER, 2015.**

PER COURT:

. Applicants are involved in Crime No. 69/2015 registered at Phulambri Police Station, Tq. Phulambri, Dist. Aurangabad for the offences punishable under Sections 498-A, 304-B read with 34 of the Indian Penal Code and Sections 4 and 5 of the Dowry Prohibition Act.

2. Heard Mr M. R. Jadhav, learned counsel for applicants and Mr U. S. Mote, learned APP for respondent-State.

3. Prosecution case in brief is as under : -

Deceased Puja was married to applicant No. 1 Dadarao on 2.5.2014. On 27.4.2015, she died due to poisoning. Incident took place at her matrimonial house.

4. Lahu Shinde father of Puja lodged report with the Police Station on 29.4.2015 alleging therein that Puja was ill-treated on demand of Rs. 50,000/- for purchase of a motorcycle. Before 5 months of the incident her father Lahu and his friend Shaikh Ayub Shaikh had been to matrimonial house of Puja and applicant No. 1 Dadarao was given Rs. 40,000/- by them. That time informant requested applicant No. 1 not to ill-treat his daughter Puja.

5. Thereafter Puja had been to her maternal house for Padwa festival. She disclosed to her parents that though money was given for purchase of motorcycle, her husband and others in family were demanding Rs. 50,000/- for the marriage of Vandana her

sister-in-law. She also informed them that she was being ill-treated and beaten by her husband and others in family.

6. On 27.4.2015 at around 6.00 am when informant was at Chikalthana he received a phone call from Bhausaheb father-in-law of Puja informing that Puja was ill and she was admitted to Dhanwai Hospital at Aurangabad. Informant rushed to the Hospital and came to know through accused No. 1 and his father that Puja consumed poison.

7. Learned Counsel for applicants placed reliance on the decision of this Court in **Laxman Irappa Hatti Vs. The State of Maharashtra** [(2004(4) Mh.L.J. 415 (Bom))] and submitted that filing of charge-sheet amounts to substantial change in circumstance and since charge-sheet has been filed applicants be released on bail. According to learned counsel vague allegations of ill-treatment are made against the husband and his father and on the basis of vague allegations it cannot be said that applicants are *prima facie* involved in the commission of alleged offence.

8. Per contra learned APP submits that within 11 months of marriage Puja died at the house of applicants. The death in question

is unnatural. It is for the accused to explain the circumstances under which Puja consumed poison. Learned APP submits that involvement of applicants in a serious crime is apparent at this stage from FIR and the statements of witnesses and prays to reject the prayer for bail.

9. On perusal of FIR it can be seen that FIR on its face makes out a *prima facie* involvement of applicant No. 1 – Dadarao. As indicated above, marriage took place on 2.5.2014 and Puja died on 27.4.2015 i.e. within 11 months of the marriage. As per Post-mortem report cause of death is poisoning. Incident occurred at the house of applicants. She disclosed about ill-treatment at the hands of applicant No. 1 on demand of Rs. 50,000/- for purchase of a motorcycle and when the said demand was fulfilled again on demand of Rs. 50,000/- for marriage of her sister-in-law Vandana. Considering the allegations in FIR, nature of offences, *modus operandi* of applicant No. 1 and the ingredients of Section 304-B of the IPC, this Court is not inclined to release applicant No. 1 on bail.

10. So far as applicant No. 2 is concerned, no specific role is attributed to him either in FIR or in the statements of witnesses. On the basis of vague allegations *prima facie* involvement of applicant

No. 2 in the commission of offence cannot be ascertained. He would be therefore entitled for bail. Hence the following order.

ORDER

- (i) Criminal Application No. 5431 of 2015 is partly allowed.
- (ii) Applicant No. 2 Subhash s/o Bhausahab Maind is released on bail in Crime No. 69/2015 registered at Phulambri Police Station, Tq. Phulambri, Dist. Aurangabad for the offences under Sections 498-A, 304-B read with 34 of the Indian Penal Code and Sections 4 and 5 of the Dowry Prohibition Act on his furnishing P.R. and S.B. of Rs.10,000/- (Rupees Ten Thousand only) each.
- (iii) Applicant No. 2 shall not tamper with the prosecution evidence and shall make himself available as and when required by the Investigating Agency.
- (iv) Application of applicant No. 1 Dadarao s/o Bhausahab Maind stands rejected.

[INDIRA K. JAIN, J.]