

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 347 OF 2015

Milind Dattatraya Hajare & ors. ... Applicants.

Versus

The State of Maharashtra. ... Respondents.

Mr. Sudeep Pasbola a/w. Mr. Mohd. Umar Kazi, advocate for Applicants.

Mr. R.D. Suryawanshi, advocate for intervenor.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : JUNE 22, 2015

P.C.:

1 Heard the learned Counsel for the applicant, learned Counsel for the intervenor and the learned APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest

in Crime No. 78 of 2014 registered at Kinhavli Police Station initially for offence punishable under Section 306, 498A read with Section 34 of the Indian Penal Code and subsequently Section 302 of the Indian Penal Code was added.

3 It is the case of the prosecution that on 1/12/2014 the applicant No. 1 lodged a report at the police station contending therein that he got married to Madhura on 28/11/2010. On 1/12/2014 the applicant No. 1 had left his house for his service early in the morning. He was directed by his employer to visit the bank at Murbad. According to him at about 1.30 p.m. his cousin Aniket had informed him telephonically that Madhura had fainted and she has been taken to the hospital. He has further informed that the applicant Nos. 2 and 3 had left the house to attend the marriage and therefore, the applicant No. 1 was summoned immediately. He has further reported that Madhura was found dead. That she was suffering from Thyroid for the past two years. On the basis of his report, A.D. No. 38 of 2014 was registered

under Section 174 of the Code of Criminal Procedure, 1973 and investigation was set in motion.

4 The inquest panchanama was also conducted in A.D. Enquiry. That the dead body of Harshala was sent for autopsy. Post mortem notes reveal the cause of death as death due to asphyxia due to strangulation, however visera was preserved. It appears that after receipt of post mortem notes, father of Madhura lodged a report at the police station alleging therein that his daughter Harshala/Madhura was being ill-treated by the applicants. On flimsy ground, she was being harassed. He has narrated the incident thereby giving the manner in which Harshala was assaulted and ill-treated by her in-laws. On 30/11/2014 the complainant had been to the house of Harshala and had stayed with one relative nearby. On 1/12/2014 at about 10.30 a.m. he had been to the house of his daughter. He had tea and thereafter he left. Thereafter, he had received phone call and therefore, left the house. He had been to Sathgaon. There he was informed that Harshala was taken to primary health center, but then the relatives have been

advised to take her to Shahapur. He had been to Chaitanya Hospital at Shahapur. There he learnt that Harshala had expired. He was also informed that she had committed suicide by hanging herself to the rafter in her room with odhani. He has alleged that she has committed suicide due to harassment and ill-treatment at the hands of the applicants. Hence, the offence was registered for offence punishable under Section 498A, 306 read with Section 34 of the Indian Penal Code. Hence, this application seeking pre-arrest bail.

5 Perused the papers of investigation. Post mortem notes clearly indicate that there was a ligature mark around neck which was half circle around neck at the level of hyoid bone 8-10 cm. x 1-1.5 cm. extending from below the ear lobe from left side to right side. There was fracture of hyoid bone. It specifically indicates that ligature mark around neck was half circled extended from below ear lobe. The cause of death is shown as “due to asphyxia due to strangulation”. It appears from the papers of investigation that the investigating officer had asked for the opinion from the medical officer, who had conducted post

moretem and he had stated that ligature mark does not correlate with odhani with which it is alleged that she had committed suicide, as the ligature mark was sharp.

6 Perused the photographs of the deceased which clearly shows that she had some injuries on her person. The ligature mark appears to be sharp. In the course of hearing of the present application, the investigating agency was orally directed to take second opinion from the doctor about the aspect as to whether it is a suicidal death or a homicidal death. The second opinion given by doctor reiterates and confirms the opinion given by the first doctor and there is no difference of opinion.

7 The learned Counsel for the applicants submits that upon perusal of the recitals of the FIR, it is clear that when the complainant had visited the house of the deceased, none of the applicants were present in the house. It is reiterated that the applicant No. 1 was at his work place, whereas the applicant Nos. 2 and 3 had been to the school of

their grand daughter and picked her up and had gone to attend marriage. It is further submitted that the applicant Nos. 2 and 3 had informed Rekha Hajare that she should go and inform the deceased about the fact that they had picked up the child from school and had taken her alongwith them to attend marriage. The C.D.R. details did not corroborate with the said aspect. It prima facie appears that the death of deceased Harshala had taken place in suspicious circumstances.

8 Upon perusal of the papers of investigation and the statement under Section 161 of the Code of Criminal Procedure, 1973, it prima facie appears that there has been suppression of facts by the applicants. No case is made out for grant of pre-arrest bail. Custodial interrogation of the applicants who are being prosecuted for offence punishable under Section 302 of the Indian Penal Code has become imperative. It is a case of custodial death.

9 The learned APP submits that the applicants are also being prosecuted for offence punishable under Section 201 of the Indian Penal Code as they have made an attempt to mislead the investigating agency.

10 Hence, the application seeking pre-arrest bail being sans merit stands rejected.

11 At this stage, the learned Counsel for the applicants submits that by an order dated 10th March, 2015, this Court (Coram : Revati Mohite Dere, J) had passed an order to the effect that the applicants shall not be arrested till the next date because they were protected by interim order during the pendency of their anticipatory bail application before the Sessions Court. The matter was adjourned from time to time on one or the other count. However, staying the order rejecting the application seeking pre-arrest bail would hamper with the process of investigation and therefore, this Court is not inclined to stay the order rejecting anticipatory bail application as the interim order was passed in the

nature of direction that the investigating agency shall not arrest the applicants.

12 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)