

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1023 OF 2015

Kamal Haribhau Nagane	... Applicant
vs.	
The State of Maharashtra	... Respondent

Mr. A.P. Mundargi, Senior Counsel i/b. Mr. Rahul Kate for the Applicant.

Mrs. R.V. Newton, APP for Respondent – State.

CORAM : **MRS.MRIDULA BHATKAR, J.**

DATE : **JULY 06, 2015**

P.C.:

. The application is moved for bail. The applicant/accused is facing charges for the offences punishable under Sections 302, 201, 498(A) and 436 read with 34 of the Indian Penal Code in C.R. No. 68 of 2015 registered with Indapur police station, Pune. The father of the deceased Shital has given the information of the death of his daughter to police. Pursuant to which the offence was registered.

2. It is the case of the prosecution that the deceased and the co-accused got married in the year 2005. They have two daughters out of their wedlock. However, during the period of 10 years of her

cohabitation, the deceased was subjected to mental and physical cruelty. There was continuous demand of dowry from the accused persons. The applicant/accused is the mother in law of the deceased and the co-accused is husband and father in law of the deceased. It is the case of the prosecution that, as the deceased could not fulfill the demand of money of the applicant/accused, she was tortured in the various manner. She had narrated the incidents of harassment and cruelty to her parents and brother. She used to tell about the harassment from time to time. However, she continued to reside with the accused.

3. On 23rd February, 2014 at about 6.00 p.m Shital phoned her father and informed that everything was fine in the house. However, at about 10.45 p.m, the complainant received a phone call informing him that due to short-circuit there was fire in the house and in that fire Shital got burned. Thereafter, immediately the complainant and his family members were called to Indapur police station. At that time, police told them that Shital is dead and her body is kept at the Government hospital. The complainant went there and found that Shital was burnt and she was dead. Then he gave

complaint to the police station against the applicant/accused and the co-accused i.e. husband and her in-laws. They were arrested immediately. Hence, this bail application.

4. The learned senior counsel for the applicant has submitted that there is no evidence against the applicant/accused. The place where the fire took place was a kitchen and the kitchen is separately constructed away from the other rooms. Therefore it was not possible that all the members would have noticed the fire at the initial stage. He further submitted that the applicant/accused is taken in custody only on suspicion which is not tenable under law. He pointed out that in the first information report, the father of the deceased has foisted incorrect motive to the present applicant/accused and co-accused. He submitted that the reason for torture and killing Shital was stated as, illicit relationship between the present applicant/accused and her son which is incorrect. It only manifest a vindictive attitude and tendency for false implication of all the family members. He submitted that the case stands only on the circumstantial evidence and therefore if wife is found dead then the involvement of the relative who were present in the house can not be presumed. The essential ingredient to prove

the offence of murder must be shown in the case. The applicant/accused is innocent and she be released on bail. In support of his submissions, he relied on the ratio laid down in the case of “*Vitthal Tukaram More and Others vs. State of Maharashtra*”¹.

5. The learned prosecutor has submitted that the deceased was found dead and she was 100% burnt injuries. Therefore it was not possible to find out other injuries on the person of the deceased. He submitted that there were complaints by the deceased to her parents and brother about the illtreatment received at the hands of the applicant/accused and the co-accused. She told that she was suspected unnatural relationship between her husband and her mother in law. There was constant demand of money and the accused persons blamed the deceased for producing two daughters. The prosecutor has submitted that there is sufficient evidence against the applicant in respect of commission of murder of the deceased.

6. In the case of Vitthal More, the deceased wife was found dead in a Well with 15 ante-mortem injuries on her body. The postmortem report shows the cause of the death due to strangulation

1. (2002) 7 Supreme Court Cases 20.

by neck and drowning. The husband and father in law of the deceased were convicted and it was confirmed. However, the High Court has convicted other appellant Nos. 3 to 6 because they were residing with the convicted accused as the members of the joint family. The incident had occurred immediately after the deceased returned to her marital home. All the appellants were present at the relevant time in the house and therefore the High Court held that considering the proof of injuries, it was not possible for one or two persons to have caused so many injuries on the person of the deceased. This finding was rightly set aside by the Hon'ble Supreme Court holding that it is insufficient evidence to draw inference regarding their participation in the crime. The ratio cited in the case of Vithal Tukaram More (supra) is after trial on the conviction and the case in hand is at the stage of bail and on the principle of facts also this case is distinguishable.

7. Perused the first information report, postmortem notes and other evidence. So also the map of the scene of offence and the other documents produced by the learned senior counsel for the applicant/accused. The case is based on the circumstantial evidence.

However, in the case of bride or wife burning, the incident takes place within four walls where only the deceased and accused are generally present. The theory of fire due to short-circuit appears to be incorrect. The spot panchanama discloses the presence of kerosene on the pieces of clothes of the deceased. The deceased was 100% burnt. The statement of the witnesses and neighbours disclose that there were continuous quarrels between the deceased and applicant/accused and co-accused. Thus, *prima facie* there is sufficient evidence of cruelty against the applicant/accused. The record discloses that the applicant/accused was present in the house when the deceased died. Considering all these factors, I am of the view that it is not a case to grant the bail.

8. Hence, the application stands rejected.

9. However, the applicant/accused being a woman aged 52 years, she may apply afresh if the trial is not commenced within nine months from today.

(MRS.MRIDULA BHATKAR, J.)