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

CRIMINAL APPLICATION NO.941 OF 2016

Vinay Falgun @ Falgunrao Nikhare ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr Joydeep Chatterji, Advocate for applicant;
Mr S.M. Ganachari, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 18th February, 2016

ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicant seeks his release on pre-arrest bail, in connection with C.R. No.12 of 2016, registered with Deopur West Police Station, Dhule, for offences punishable under sections 498-A, 304-B read with section 34 of the Indian Penal Code.

2. The incident is alleged to have taken place on 5th October, 2015, for which the first information report came to be lodged on 24th January, 2016, i.e. after a period of more than three months.

3. The prosecution story is that the applicant got married to deceased Gomati on 28th May, 2015 at Nagpur. The permanent place of abode of applicant is Bhandara, however, for the purposes of employment he was

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required to stay at Deopur, Dhule, which is also a place of residence of the complainant. The complainant happened to be the father-in-law of the applicant. It is claimed in the prosecution story that deceased Gomati was murdered by the present applicant, which story according to the prosecution is based on certain messages noticed in the sms inbox of her mobile phone.

4. In the above background, while trying to make out a case for grant of pre-arrest bail, Mr Chatterji, learned Counsel appearing on behalf of the applicant would urge that initially an accidental death came to be registered in the matter and the same was inquired into. He would then urge that the said inquiry depicts that the statements of the complainant, his wife Hemlata and their relatives were recorded. All the witnesses supported the case of the applicant, in a sense, that there were no indifferences between the present applicant and deceased Gomati and that there was no demand of dowry at the hands of the applicant or his relatives.

5. Learned Counsel would then urge that certain messages were noticed in the sms inbox of the mobile phone of deceased Gomati which were seen by the complainant and misinterpretation thereof has resulted into registration of crime in question against the applicant. He claims that the applicant is innocent and is falsely implicated in the crime in question.

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6. While opposing the application, learned Addl. Public Prosecutor would urge that this Court must take a judicial notice of the fact that deceased Gomati has lost her life within a period of six months from the date of her marriage.

7. Learned Public Prosecutor would then urge that the presumption under section 113-A of the Evidence Act would arise against the applicant. He would then urge that the complainant and the mother-in-law of the applicant supported the present applicant initially, however, subsequently noticed that relations between deceased Gomati and applicant were not smooth and has relied upon the messages which were found in the sms inbox of the mobile phone of deceased Gomati. He would then urge that the investigation till date warrants custodial interrogation of the applicant in order to find out the cause for and the circumstances in which deceased Gomati has committed suicide and thus sought rejection of the application.

8. Upon perusal of the investigation papers, it is not in dispute that initially an accidental death was registered in the matter of death of Gomati. While inquiring into the said accidental death, on 6th October, 2015 statements of Sushilkumar, the father-in-law of the applicant; Hemlata, the mother-in-law and Raju, the uncle of deceased Gomati came to be recorded. The other witnesses from the family of the complainant whose statements were recorded, have also supported the case of the applicant. Rather, in the statements, it was claimed by all these witnesses

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that they were regular visitors to the place of residence of Gomati and that the applicant and deceased Gomati were residing together and were living a smooth life. In their statements, the witnesses have neither alleged about demand of dowry nor any adverse incident in the marital life of deceased Gomati. It is only after noticing the messages in the sms inbox of the mobile of deceased Gomati, entire story was changed by the complainant and he started blaming the applicant of committing murder of deceased Gomati.

9. It is required to be noted here that so far as the above referred messages are concerned, the statement of the present applicant was already recorded by the Investigating Officer on 3rd January, 2016. The said statement depicts a proper explanation to the messages in question, which were formed to be the basis for registration of the offence under sections 498-A and 304-B of the Indian Penal Code.

10. Although the learned Addl. Public Prosecutor was right in inviting attention of this Court to the presumption under section 113-A of the Evidence Act, yet it is required to be noted that the said presumption is rebuttable. In the backdrop of the earlier statements of the complainant and his family members, in my opinion, the developed story narrated against the applicant, implicating him as an accused in offences punishable under sections 498-A and 304-B of the Indian Penal Code, *prima facie*, appears to be improbable.

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11. In the above background, in my opinion, it will be appropriate to grant pre-arrest bail to the applicant. I, therefore, pass following order :-

In the event of arrest of the applicant, in connection with C.R. No.12 of 2016, registered with Deopur West Police Station, Dhule, for offences punishable under sections 498-A, 304-B read with section 34 of the Indian Penal Code, he be released on bail, on furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

The applicant shall attend the concerned police station initially from 26th to 28th February, 2016, between 10.00 a.m. and 12 noon and thereafter as and when called by the Investigating Officer.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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