

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1765 OF 2016

Soma S/o Lalchand Javare,
Age 65 years, Occu.: Retired,
R/o Panvel, Dist. Raigarh .. Applicant

Vs.

The State of Maharashtra,
Through Police Station Officer,
Nandurbar Taluka Police Station,
Tq. and Dist. Nandurbar .. Respondent

Mr. Gajanan G. Kadam, Advocate for the applicant
Mr. U.S. Mote, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.
DATE : 01/04/2016

ORAL ORDER :

Heard both sides.

2. The present applicant, who is apprehending arrest at the hands of Nandurbar Taluka Police Station, Dist. Nandurbar in crime no. 29 of 2016 for the offences punishable under section 302, 307, 143, 147 r/w. 34 of the Indian Penal Code, is praying for his release on bail, in the event of his arrest.

3. The complaint filed by the husband of the deceased — Rukhmabai would show that there was a dispute between his family and the family of the present applicant over an open plot. In the circumstances, on 23/02/2016, while all the male members were away from the village, his deceased wife as well as one daughter were in the house, she was however found missing in the evening and her dead body was found in a well on 23/02/2016. Accidental death report was filed by the complainant on 24/02/2016. Thereafter, on 04/03/2016, he filed the complaint. In the said complaint, he explained the enmity between his family and the present applicant and the proximity of the present applicant with rest of the two accused.

4. Learned counsel for the applicant submits that in-fact, the applicant resides at Panvel. He is a retired person. He files on record the photocopies of two agreements on non-judicial stamp papers. The same are accepted on record and marked as "X" and "X-1" for the purpose of identification. The same would show that there was already compromise between complainant and the present applicant regarding the open plot,

which, in-fact, according to him belong to the present applicant. Finding that the dead body was found in a well and undue advantage of the situation is taken to victimize the present applicant, in the circumstances, he submits that the applicant be released on pre-arrest bail.

5. Learned A.P.P. opposed the application. He submits that plea of alibi cannot be taken into consideration for the purpose of deciding the anticipatory bail application. He further submits that since the case is based on circumstantial evidence and since the offence is serious, custodial interrogation of the present applicant would be required.

6. Mr. Kadam, learned counsel for the applicant relies on the ratio in the case of **"Arnesh Kumar Vs. State of Bihar"** (2014) 8 SCC 273. He further submits that though the matter before the Hon'ble Supreme Court was for the offences punishable under section 498-A of the Indian Penal Code and under section 4 of the Dowry Prohibition Act, it has been observed that it need not be restricted only to such cases. In the circumstances, he submits that the applicant be

released on anticipatory bail.

7. Upon hearing both sides, in my view, taking into consideration the seriousness of the offence, the custodial interrogation of the applicant would be required to find out the truth about the death of the deceased, no anticipatory bail can be granted to him. Ratio of "**Arnesh Kumar**" (cited supra) therefore would not be applicable in the present case. In the circumstances, the following order :-

8. The Application is therefore dismissed.

[M.T. JOSHI]
JUDGE

arp/