

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

Criminal Application No. 3387 of 2016

District : Aurangabad

Kiran Bapurao @ Bapusaheb Tupe,
Age : 35 years,
Occupation : Business,
R/o. Moshi, Taluka : Haveli,
District : Pune.

.. Applicant.

versus

1. The State of Maharashtra.
2. The District Superintendent of
Police, Aurangabad,
District : Aurangabad.
3. The Police Station Officer,
Police Station, Chawani,
Taluka & District : Aurangabad. .. Respondents.

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Mr. D.R. Adhav, Advocate, for the applicant.

*Mr. S.D. Ghayal, Addl. Public Prosecutor, for
respondent nos.1 to 3.*

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CORAM : A.M. BADAR, J.

DATE : 25TH AUGUST 2016

ORAL ORDER:

The applicant / husband of deceased Vijaya Tupe, by this application under Section 438 of the Code of Criminal Procedure, 1973, is praying for pre-

arrest bail in Crime No. 165/2016, for offences punishable under Sections 306, 498A, 323, 506, read with Section 34 of the Indian Penal Code, registered with Police Station, Chawani, Aurangabad.

2. Heard the learned Counsel for the applicant / accused. By drawing my attention to the statement of Sonal Gill and deceased Vijaya Tupe recorded respectively on 05.01.2015 and 31.01.2016, the learned Counsel submitted that because of mischief played by both of them, deceased Vijaya left her matrimonial house. It is further submitted that the husband of the deceased then lodged missing report on 05.01.2016 informing that deceased Vijaya had left her matrimonial home on 04.01.2016. In this backdrop, according to the learned Counsel for the applicant, no case for abetment of suicide by Vijaya is made out, particularly in the context of the fact that she married the applicant prior to 11 years.

3. The learned Addl. Public Prosecutor drew my attention to three dying declarations made by deceased Vijaya and contended that these dying declarations reflects cruelty and consequent abetment to Vijaya in committing suicide.

4. Perused papers of investigation.

5. The applicant has placed on record,

statements of Sonal Gill and Vijaya Tupe. Those relates to the incident prior to 31.12.2015 in respect of Sweta Sanjay Fulari. These statements reveals that deceased Vijaya and her friend Sonal Gill played mischief by throwing fake love letters in front of house of Sweta Sanjay Fulari, which appears to have resulted in registration of some non-cognizable offence.

6. Missing report lodged by the applicant shows that deceased Vijaya left her matrimonial house on 04.01.2016.

7. As against this, papers of investigation so also the FIR lodged by brother of the deceased shows that on 11.01.2016 Vijaya was driven out of the house and she committed suicide on 05.05.2016 by setting herself ablaze. Reason for commission of suicide by Vijaya disclosed in the FIR as well as in the statements of witnesses is to the effect that she was unable to conceive and the present applicant was insisting her to give consent for his second marriage. On her refusal, the applicant as well as his family members were subjecting Vijaya to cruelty.

8. Two officially recorded dying declarations of Vijaya by the Executive Magistrate as well as Police personnel, with necessary examination from the Medical Officer, shows that as the present applicant

as well as her in-laws were subjecting her to cruelty, as she could not deliver child out of wedlock with the applicant, she has indulged in self-effacement. The suicide note written by Vijaya eloquently mentions the circumstances in which she had taken decision to commit suicide. Cruelty meted out to her by the present applicant is elaborately mentioned in the said application. In the wake of this positive evidence, defence of the applicant / accused will have to be tested at the time of trial.

9. Prima facie there is material to connect the applicant with the crime in question. The offence alleged is heinous and having deep deep impact on the society. No case for anticipatory bail is made out.

10. The Application is accordingly rejected.

11. At this stage, the learned Counsel for the applicant seeks two weeks' time for the applicant in order to enable him to surrender before investigating agency. Time of two weeks from today i.e. till 1st September 2016, as prayed, is granted to the applicant in order to surrender before investigating agency.

(A.M. BADAR)
JUDGE

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