

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

CRIMINAL APPLICATION NO. 4128 OF 2016

Natha s/o. Thakaji Galande .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr.Rahul R. Karpe, Advocate for the applicant.

Mr.S.P. Sonpawale, APP for respondent/State.

CORAM : A.M. BADAR,J.

DATED : 05.10.2016

P.C. :-

1. The applicant/accused in Crime No. I-272 of 2015 registered with Karjat Police Station, Dist. Ahmednagar, for the offences punishable under sections 302, 498-A, 354, 323 read with section 34 of the Indian Penal Code, by this application, is seeking his release on bail, after filing of the charge-sheet.

2. Heard learned Counsel appearing for the applicant/accused. He argued that the F.I.R. does not show exact date and time when the alleged incident of outraging modesty of the deceased at the hands of the present applicant took place. Learned Counsel drew my attention to the statements of witnesses recorded by the investigator and argued that all the statements are

identical in nature and they all are relatives of the deceased. Learned Counsel argued that no statement of independent witness came to be recorded during the course of investigation and therefore after completion of investigation, as there is no direct evidence against the applicant, he is entitled to be released on bail.

3. Learned A.P.P. drew my attention to the confession of the applicant/accused recorded on 28.10.2015 under title 'discovery panchanama' and argued that the applicant had admitted his guilt in the crime in question.

4. Perused the charge-sheet. The confession titled as 'discovery panchanama' is not admissible in evidence and it cannot be looked into by this Court for any purpose, as nothing was discovered pursuant to the confession of the applicant/accused. In-fact, this is a device used by the investigator to bring on record inadmissible material titling the confession as 'discovery panchanama. Hence, discovery panchanama cannot be looked into while deciding instant application.

5. Perused the charge-sheet. The post-mortem report shows that the dead body of Tai Ganesh Galande was having six ante-mortem injuries in the nature of

contusion and abrasion. The Autopsy Surgeon concluded that deceased Tai died because of asphyxia due to throttling.

6. The incident of death of Tai took place in her matrimonial house where she was living with her husband, mother-in-law as well as present applicant who is her father-in-law.

7. Perusal of the F.I.R. as well as statements of witnesses go to show that Tai married with Ganesh on 21.06.2015 and prior to one month of her death she had informed her father that present applicant casted an evil eye on her. He had embraced her. The F.I.R. shows that the informant/father met deceased Tai and she disclosed the incident to him. Similar are statements of the witnesses.

8. It is seen that deceased Tai contacted her father on 20.10.2015 with a request to meet her. Then as seen from the F.I.R. at 5.00 a.m. on 21.10.2015, present applicant informed the informant/father of deceased Tai that Tai is immobile and she is not speaking.

9. Statement of Kisan Galande shows that on 21.10.2015 at 5.00 a.m., he had been to the house of

present applicant and present applicant was there in the house.

10. The incident in question, as such, took place prior to 05.00 a.m. of 21.10.2015 in matrimonial house of deceased Tai. She was exclusively in the company of the accused persons including present applicant. She suffered homicidal death in the house of present applicant. Prima facie, there is evidence of motive which shows that the applicant was casting evil eye on deceased Tai. In such situation, as deceased Tai was exclusively in the custody of present applicant and co-accused, it will be for the applicant to explain how Tai died homicidal death.

11. In this view of the matter, no case for bail is made out. As such, the application is rejected.

[A.M. BADAR, J.]