

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4273 OF 2016

- 1] Rehana @ Babyjaan Yunus Shaikh,
Age : 48 Years, Occu. : Household,
R/o : Adarsh Nagar, Dondaicha,
Tq. Sindhkheda, District : Dhule.
- 2] Seema Samir Shaikh,
Age : 20 Years, Occu. : Household,
R/o : Adarsh Nagar, Dondaicha,
Tq. Sindhkheda, District : Dhule.
- 3] Sadiya Salim Shaikh,
Age: 30 Years, Occu. : Household,
R/o Mohammadiya Nagar, Dondaicha,
Tq. Sindhkheda, District : Dhule.

..APPLICANTS

VERSUS

- 1] The State of Maharashtra,
Through Superintendent of Police,
Dhule, District Dhule.
- 2] The Police Inspector,
Dondaicha Police Station,
Tq. Sindhkheda, District : Dhule.

.. RESPONDENTS

WITH

CRIMINAL APPLICATION NO. 4272 OF 2016

- 1] Samir Yunus Shaikh,
Age : 38 Years, Occu. : Business,
R/o Adarsh Nagar, Dondaicha,
Tq. Sindhkheda, District : Dhule.

..APPLICANT

VERSUS

- 1] The State of Maharashtra,
Through Superintendent of Police,
Dhule, District Dhule.

- 2] The Police Inspector,
Dondaicha Police Station,
Tq. Sindhkheda, District : Dhule.

.. RESPONDENTS

. . .
Advocate for Applicants : Mr. Yogesh B. Bolkar.
APP for Respondents/State : Mrs. Vaishali N. Patil (Jadhav)

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CORAM : A. M. BADAR, J.

DATE : 22nd AUGUST, 2016.

PER COURT :

1] Applicants Rehana @ Babyjaan, Seema and Sadiya in criminal application No.4273/2016 are claiming pre-arrest bail whereas applicant Samir in criminal application No. 4272/2016, is praying for regular bail in crime No. 86/2016 registered with Police station Dondaicha, Tq. Sindhkheda, Dist. Dhule, for offences punishable under Sections 306, 498(A) r/w 34 of I.P.C.

2] Heard the learned counsel for applicants / accused. Learned APP opposed the applications by contending that names of applicants are categorically figuring in the F.I.R. and allegations against them are serious. Learned APP therefore seeks rejection of both these applications.

3] Perused the papers of investigation made available including the F.I.R. lodged by Jamshaad Beg Yunus Mirza. Applicant Rehana is mother in law, applicant Seema is wife of brother of

husband whereas applicant Sadiya is married sister of the husband of deceased Rabiya @ Shabnam. Applicant Samir is brother of husband of deceased Rabiya @ Shabnam. Deceased Rabiya @ Shabnam married Zahir Yunus Shaikh on 11.01.2015 and thereafter, started cohabiting with him at his house shared by present applicants except applicant Sadiya.

4] Averments against applicants as per prosecution case are to the effect that applicants Rehana, Seema, Sadiya and Samir were quarreling with Rabiya @ Shabnam for the reason that she was not able to conceive after marriage. It is further averred that these applicants were instigating husband of deceased Rabiya for beating her.

5] Perusal of the F.I.R. itself shows that, soon prior to her death, the informant had telephonic talk with deceased Rabiya @ Shabnam. At that time, she had informed that all is well in her family life.

6] The F.I.R. reveals that, on 30.06.2016, the informant had met her deceased daughter . At that time, she told her that, she has not been provided food for two or three days and nobody is speaking nicely with her.

7] Ultimately, Rabiya indulged in self-effacement in the night intervening 1st and 2nd July, 2016 by hanging herself.

8] The term 'cruelty' is defined by explanation to Section 498(A) of IPC. It implies, heart and harmful conduct of certain intensity and persistence. It covers acts of causing both physical as well as mental torture and tyranny. However, acts of domestic cruelty are not covered by the definition of cruelty as found in explanation to Section 498(A) of IPC. Similarly, so far as 'abatement' is concerned, it requires intention and *mens-rea*. Viewing from this angle, allegations against applicants Rehana, Seema, Sadiya will have to be considered.

9] Prima facie, these applicants does not appears to have been indulged in legal cruelty to the deceased, thereby, abetting her of committing suicide. So far as applicant Samir is concerned, he is already behind the bar and considering the nature of the offences, his further pre-trial detention is not warranted. Hence, I pass the following order :-

ORDER

- i) Both applications are allowed.
- ii) Applicants in Criminal Application No. 4273/2016, in the event of their arrest, in crime No. 86/2016 registered at Dondaicha Police Station, Tq. Sindhkheda, Dist. Dhule, for offences punishable under Sections 306, 498(A) of IPC, be released on bail on their executing P.R. Bond in the sum of Rs.5,000/- (Rupees Five Thousand) each and on furnishing surety of the like amount by each of them.

ii) Applicant Samir Yunus Shaikh, in above crime, in Criminal Application No. 4272/2016, be released on bail on his executing P.R. Bond in the sum of Rs.5,000/- (Rupees Five Thousand) and on furnishing surety of the like amount.

iii) As a condition of this Order, applicants shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

iv] The applicants shall not tamper with the prosecution evidence.

v] Applicants in Criminal Application No. 4273/2016, to attend concerned police station on 28th August, 2016 in between 11:00 a.m. to 1:00 p.m. and they shall cooperate the Investigating Officer in investigation of the crime in question till filing of the charge-sheet.

vi] Criminal Applications stand disposed of in the aforesaid terms.

[A. M. BADAR]
JUDGE