

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

Criminal Application No. 4562 of 2016

District : Aurangabad

1. Suryabhan Shamrao Sapkal,
Age : 73 years,
Occupation : Nil,
R/o. Sapkalwadi,
Taluka : Sillod,
District : Aurangabad.

2. Parwatabai Suryabhan Sapkal,
Age : 67 years,
Occupation : Household,
R/o. Sapkalwadi,
Taluka : Sillod,
District : Aurangabad.

.. Applicants.

versus

The State of Maharashtra,
Through Investigation Officer,
Sillod Police Station,
Taluka : Sillod,
District : Aurangabad.

.. Respondents.

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Mr. V.D. Sapkal, Advocate, for applicants.

*Mr. S.J. Salgare, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 31ST AUGUST 2016

ORAL ORDER:

Applicants, who are father-in-law and mother-in-law of deceased Vaishali, are accused in Crime No. 116/2016, registered with Police Station, Sillod, District Aurangabad, at the instance of Taruba Yeduba More, for offences punishable under Sections 498A, 306, 304B, 323, 504, read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act. By this application under Section 438 of the Code of Criminal Procedure, they are praying for pre-arrest bail.

2. The learned Counsel appearing for applicants argued that applicants are aged about 73 years and 67 years and marriage of deceased Vaishali was solemnized in the year 2011. She had delivered two sons out of this wedlock. The learned Counsel further argued that allegations against present applicants are vague and without any details. Therefore, in submission of the learned Counsel for applicants, there cannot be any cause for these aged applicants to subject deceased Vaishali to cruelty. The learned Counsel further argued that even on the day of the incident, as per prosecution case, husband of the deceased had received balance amount of dowry and as such there was no cause for the deceased to commit suicide on account of cruelty allegedly subjected to her by present applicants.

3. The learned Addl. Public Prosecutor opposed the application by contending that apart from parental relatives of deceased Vaishali, statement of Dadarao Nikam goes to show that on the very same day of the incident, Vaishali was driven out of her house by present applicants as well as her husband and, therefore, her father had borrowed an amount of Rs. 70,000/- from Dadarao Nikam and paid it to Gajanan Sapkal - husband of deceased Vaishali.

4. Perused papers of investigation. According to the prosecution case, Vaishali was subjected to cruelty on account of demand of balance amount of dowry and she died within seven years of her married life. As she was subjected to cruelty soon before her death, according to the learned Addl. Public Prosecutor, by drawing presumption under Section 113 of the Evidence Act, prima facie case against present applicants is made out.

5. As seen from papers of investigation including the FIR, Vaishali was driven out of her matrimonial house allegedly by present applicants as well as her husband on account of demand of balance amount of dowry i.e. Rs. 40,000/-. It is seen from papers of investigation that then the informant - father paid amount of Rs. 70,000/- to accused Gajanan Sapkal by borrowing it from Dadarao Nikam. Thereafter, Gajanan Sapkal and his wife Vaishali (since deceased) left house of informant Taruba More.

Statements of neighbours of accused Gajanan Sapkal and deceased Vaishali goes to show that when Vaishali was at her house, co-accused Gajanan returned from Sillod under influence of liquor. It appears that at that time, Vaishali committed suicide by hanging herself. It appears that then co-accused Gajanan - husband of Vaishali consumed poison. From papers of investigation, possibility of indulging in self-effacement for some other reason, such as quarrel with her husband Gajanan cannot be ruled out. Once the balance amount of dowry was paid to her husband, Vaishali may not harbour any suspicion about further subjection to the cruelty. Still the incident had happened and she indulged in self-effacement.

6. Considering the subsequent development reflected from papers of investigation, custodial interrogation of applicants, who are older in age, is not warranted.

7. Hence, I pass the following order :-

(a) The Application is allowed.

(b) Applicants / accused, in the above crime, in the event of their arrest, be released on bail on their executing P.R. Bond in the sum of Rs. 5,000/- each and on furnishing one or more solvent sureties of the like amount by each of them.

(c) As a condition of this order, applicants shall attend concerned Police Station as and when reasonably called by the Investigating Officer for the purpose of investigation and they shall cooperate the Investigating Officer in investigation of the crime in question.

(d) Applicants shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(e) Applicants shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial, in the event of filing charge-sheet against them by the Investigating Officer.

(f) Applicants shall not repeat commission of similar type of offences in future.

8. The Application stands disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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