

Criminal Application No. 4630 of 2016

.. Applicants.

.. Respondent.

DATE : 14TH SEPTEMBER 2016

Applicants / in-laws of deceased Kalpana

Yogesh Magar, by this application, are seeking their release on bail in Crime No. I-104/2016 for offences punishable under Sections 498A, 304B, read with Section 34 of the Indian Penal Code, registered with Police Station, Shivoor, Taluka Vaijapur, District Aurangabad.

2. Heard the learned Counsel appearing for applicants / accused. By drawing my attention to the FIR lodged by mother of deceased Kalpana, the learned Counsel argued that illegal cruelty is not reflected from the said FIR. He further argued that the ingredients of the offence under Section 304B of the IPC are also not seen from the said FIR.

3. The learned Addl. Public Prosecutor opposes the application by contending that the crime in question is serious and Kalpana died within about two months from her marriage with Yogesh. The learned Addl. Public Prosecutor submits that statements of witnesses shows that deceased Kalpana was subjected to cruelty by her in-laws and her husband.

4. Perused the FIR as well as papers of investigation. FIR is lodged by Kantabai w/o. Sopan Bharad - mother of deceased Kalpana. She reported Police that at the time of marriage, it was decided to give gold jewelery weighing one Tola as dowry and accordingly she had given that much dowry in the

marriage of Kalpana with Yogesh. Informant mother further averred that after marriage, Yogesh was harassing Kalpana by saying that she is dark and short and therefore she does not like her. It is further averred that present applicants used to give taunts to Kalpana for the reason that in marriage, they had not received gas stove and proper hospitality was not shown in the marriage. Papers of investigation shows that dead body of Kalpana was found in a well on 26.07.2016. Provisional post mortem report is not disclosing any cause of death of Kalpana.

5. Charge against present applicants is for the offence punishable under Section 304B of the IPC. The FIR itself reveals that the decided dowry was paid at the time of marriage of Kalpana with Yogesh. Requirement of Section 304B of the IPC is harassing or subjecting a married woman to cruelty for and on account of demand of dowry and death of a married women within 7 years of her marriage in unnatural circumstances. Prima facie it is seen in the case in hand, that the amount of dowry was paid at the time of marriage. So far as cruelty is concerned, role attributed to applicants is that of giving taunts to deceased Kaplana on account of non-receipt of gas stove in the marriage and improper hospitality. Cruelty is defined by Explanation to Section 498A of the IPC. Domestic cruelty is not covered in that

Explanation. The term 'cruelty' as defined in Explanation to Section 498A is harsh and harmful conduct of certain intensity and persistence. In the case in hand, averments against present applicants are general in nature without quoting any incidence.

6. Prima facie it appears that necessary investigation qua present applicants is already over. In this view of the matter, their further pre-trial detention is not warranted.

7. Hence, I pass the following order :-

(a) The Application is allowed.

(b) Applicants / accused, in the above crime, be released on bail on their executing P.R. Bond in the sum of Rs. 15,000/- each and on furnishing one or more solvent sureties of the like amount by each of them, on the following conditions :-

(i) 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.

(ii) 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, if any, against them.

(iii) 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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