

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

917 CRIMINAL APPLICATION NO. 4851 OF 2016

RAKESH VIJAY NERKAR

VERSUS

THE STATE OF MAHARASHTRA

.....

Mr. Joydeep Chatterji, Advocate for Applicant.

Mr. S.D.Ghayal, A.P.P. for Resp. – State.

.....

CORAM : A.M.BADAR, J.

DATE : 29th SEPTEMBER, 2016

.....

PER COURT :

1. Applicant/husband is an accused in Crime No. 203/2015 registered at Dhule Taluka police station, Dhule, Dist. Dhule for the offences punishable u/ss 304 (B), 498(A), 323, 504, 506 read with 34 of the Indian Penal Code and u/ss 3 and 4 of the Dowry Prohibition Act, at the instance of Rajendra Manohar Patil, who is father of deceased wife Varsha Rakesh Nerkar. By this application he is praying for releasing him on bail after filing of charge sheet.

2. Heard learned counsel for applicant/accused. By taking me through the charge sheet, learned counsel argued that statements of parental relatives of deceased Varsha are not, no doubt, corroborating the version of informant, but statements of relatives of parents of deceased Varsha, who are residing in the village of present applicant, are not supporting prosecution case. It is argued that Rahul @ Tinu and Sharad are relatives of deceased Varsha from her parental side and they are resident of Lonkhedi, Tq. and District Dhule, where matrimonial house of deceased Varsha is situated. The incident in question took place at Lonkhedi. Above 2 witnesses are not disclosing anything about the treatment which deceased Varsha was getting from accused persons. Learned counsel further argued that statement of several neighbours from the matrimonial village of deceased Varsha are recorded by Investigating Officer and none of them is alleging cruelty to Varsha by her husband or his relatives. It is argued that co-accused are either released on bail or anticipatory bail by learned Additional Sessions Judge.

3. Learned A.P.P. opposed application by contending that statement of informant as well as relatives of deceased are corroborated by call detail record, which goes to show that soon before her death, Varsha had called informant and disclosed cruel treatment by accused persons to her. Learned A.P.P. argued that this evidence *prima facie* attracts presumption envisaged by Sections 113-A and 113-B of the Evidence Act reflecting cruelty to deceased soon before her death and her death in unnatural circumstances within 7 years

of her marriage with present applicant. He further argued that there is evidence regarding demand of dowry and cruelty on that account.

4. I have carefully considered the rival submissions and perused charge sheet. It is seen that Varsha married present applicant on 22/04/2013. Thereafter, she started residing with applicant and his relatives at village Lonkhedi. She died because of shock due to burns on 21/08/2015 at her matrimonial house at Lonkhedi. It is thus clear that her death is otherwise than in natural circumstances within 7 years of her marriage with present applicant.

5. At this juncture, it is apposite to note that provision of section 498-A of the Indian Penal Code envisaged intention to drag or force married woman to commit suicide by un-abetted persistent and grave cruelty. It requires willful conduct of such a nature so as to propel or compel married woman to end her life. In such offences, it is very easy to make allegations and once they are made, then it is very difficult to dislodge the same. Therefore, the Court is bound to apply strictest scrutiny to the material gathered by Investigating Officer.

6. In the case in hand, informant – father, mother Bebibai and other parental relatives of deceased Varsha, named Kiran Manohar Patil, Jagdish Yuvraj Patil, Girish Rajendra Patil and Rahul Rajendra Patil have stated the rough weather in matrimonial life of deceased Varsha. As per their

version, at the time of marriage, dowry of Rs. 1 Lakh was paid to present applicant. It is further averred that about 7 months prior to the incident, there was demand of Rs. 2 Lakh from accused persons to deceased Varsha. That amount was paid by informant. However, within few days then there was demand of Rs. 1 Lakh for purchase of plot of land. Informant – father had informed accused persons that he will arrange money. Then, according to prosecution case, on 21/08/2015 at 11.45 a.m. - 12.00 noon, there was phone call from Varsha to her father informing that accused persons are subjecting her to cruelty on account of demand of Rs. 1 Lakh from her. At about 1.30 – 2.00 p.m. on that day, informant – father was told by Varsha's relative named Rahul, resident of Lonkhedi that Varsha died. When parents of Varsha rushed to Lonkhedi, they saw dead body of Varsha in her matrimonial house. None of the accused was found on the spot.

7. Rahul @ Tinu and Sharad are cousins of deceased Varsha residing at Lonkhedi i.e. village of accused persons where deceased was residing. Statements of these witnesses are not showing any disclosure to them by deceased Varsha about the treatment given to her by accused persons. These witnesses are stating that they heard about cruelty to Varsha from her parents. Statement of Digamber, Arun and Raghunath, who are neighbours of deceased Varsha are not showing any illtreatment to her by accused persons.

8. It is not in dispute that co-accused mother-in-law and sister-in-law of deceased Varsha are granted anticipatory

bail, whereas co-accused father-in-law of Varsha named Vijay Nerkar is granted bail by learned Additional Sessions Judge. Allegations against all of them are similar in nature.

9. Now the investigation is over. I have set out the nature of evidence available against accused persons including present applicant. In this view of the matter, further pre-trial detention of present applicant in the crime in question after filing of charge sheet is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) Applicant Rakesh Vijay Nerkar in Crime No. 203/2015 registered at Dhule Taluka police station, Dhule, Dist. Dhule for the offences punishable u/ss 304 (B), 498(A), 323, 504, 506 read with 34 of the Indian Penal Code and u/ss 3 and 4 of the Dowry Prohibition Act be released on bail on executing P.R. Bond of Rs. 15,000/- [Rupees Fifteen Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, applicant 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) Applicant shall not tamper the evidence of the prosecution.

(v) Applicant shall co-operate the trial Court in the expeditious disposal of trial against him.

[A.M.BADAR, J.]

KNP/Cr.Apln. 4851.2016