

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

Criminal Application No. 5183 of 2016

District : Nanded

1. Narhari s/o. Sakharam Jadhav,
Age : 34 years,
Occupation : Agriculture.

2. Suresh @ Balu s/o. Sakharam Jadhav,
Age : 36 years,
Occupation : Agriculture.

Both R/o. Pimpranwadi,
Taluka : Loha,
District : Nanded.

3. Bharat s/o. Madhavrao Bodke,
Age : 45 years,
Occupation : Agriculture,
R/o. Wadeपुरi,
Taluka : Loha,
District : Nanded.

.. Applicants.

versus

The State of Maharashtra.

.. Respondent.

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Mr. Vaibhav B. Dhage, Advocate, for applicants.

*Mr. S.P. Sonpawale, Addl. Public Prosecutor, for
the respondent.*

*Mr. Pavan P. Uttarwar, Advocate, for the original
complainant.*

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CORAM : A.M. BADAR, J.

DATE : 30TH SEPTEMBER 2016

ORAL ORDER:

Applicants, who are husband and brothers-in-law of deceased Rekha w/o. Narhari Jadhav, by this application, are seeking their release on bail in Crime No. 57/2016 registered at Police Station, Sonkhed, District Nanded, for offences punishable under Sections 498A, 304B, 306, read with Section 34 of the Indian Penal Code.

2. Heard the learned Counsel appearing for applicants / accused. He argued that marriage of Rekha was solemnized with applicant no.1 Narhari prior to 8 years of her death and therefore Section 304B of the IPC has no applicability to the instant case. The learned Counsel further argued that applicant no.3 Bharat is husband of sister of applicant no.1 Narhari and he is residing in some other village. The learned Counsel further argued that applicant no.2 Suresh @ Balu is also residing separately from applicant no.1 Narhari who is husband of deceased Rekha. The learned Counsel further argued that no offence is made out even prima facie from the FIR in question and therefore further pre-trial detention of applicants is not warranted.

3. The learned Addl. Public Prosecutor opposed

the application by contending that statement of mother of the deceased is corroborating the version of the father of the deceased reflected in the FIR. The learned Addl. Public Prosecutor further drew my attention to statement of Murlidhar Jadhav - cousin of deceased Rekha and submitted that Murlidhar Jadhav had witnessed assault on Rekha by applicant no.1 Narhari at the time of Nagpanchami festival of the last year. Therefore, according to the learned Addl. Public Prosecutor, as there was continuous harassment to deceased Rekha, she committed suicide and therefore applicants are not entitled for bail.

4. Perused papers of investigation including the FIR lodged by Balaji s/o. Laxmanrao Jadhav. As disclosed in the FIR, Rekha married applicant no.1 Narhari 8 years prior to lodging the FIR. The FIR was lodged on 24.08.2016 when Rekha allegedly committed suicide by jumping in well near her matrimonial house in village Pimpranwadi. As such there is serious doubt about applicability of Section 304B to the case in hand.

5. Informant Balaji Jadhav averred that 2 or 3 months prior to the incident, Rekha was sent to her parental house at Dagadgaon by her husband applicant no.1 Narhari by asking her to bring an amount of Rs. 2,00,000/- from her parents. The informant informed applicant no.1 Narhari that he is not having that

much amount. Rekha was then sent back to her matrimonial house. The informant reported that on 18.08.2016, Rekha came to her parental house for Rakhi-Pournima festival and informed her parents that her husband, mother-in-law, brother-in-law, sister-in-law and husband of her sister-in-law are giving more harassment to her on account of demand of Rs. 2,00,000/-. The informant further reported that on 24.08.2016, he came to know that Rekha died because of fall in a well. Perusal of the FIR shows that there are no averments regarding harassment or subjecting Rekha to cruelty during her married life with applicant no.1 Narhari except the harassment disclosed at Rakhi-Pournima festival on 18.08.2016 for demand of Rs. 2,00,000/-. The informant's father is not disclosing when Rekha reached to her parental house 2 or 3 months prior to the incident, she reported harassment or cruelty to her on account of demand of Rs. 2,00,000/-.

6. On this backdrop, averments of mother of deceased Rekha are to the effect that Rekha disclosed her that for trifling reasons, accused persons assault her and harasses her. She further disclosed that Rekha informed her that on account of demand of Rs. 2,00,000/-, accused persons cause her physical and mental harassment.

7. Murlidhar Jadhav had reported that in last

year at Nagpanchami festival, he saw applicant no.1 Narhari assaulting Rekha.

8. This is the nature of evidence available against applicants. Prima facie the FIR does not show any illtreatment or harassment up to about Rakhi-Pournima festival i.e. i.e. 18.08.2016. What was physical or mental harassment to Rekha, is not described by her mother Kamalbai. Statement of Murlidhar Jadhav shows one incident of assault.

9. In this backdrop, definition of the term 'cruelty' as found in Explanation to Section 498A of the IPC becomes relevant. Cruelty requires wilful conduct of such a nature as would drive a married woman to commit suicide or to cause grave injury or danger to her life. Similarly, harassment of a married woman with a view to coerce her to meet any unlawful demand also amounts to cruelty. Thus, cruelty implies harsh and harmful conduct of certain intensity and persistence.

10. Considering the nature of evidence available against present applicants and the fact that they are now in magisterial custody remand, I am of the opinion that their further pre-trial detention is not warranted.

11. 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. 20,000/- each and on furnishing one or more solvent sureties of the like amount by each of them.

(c) As conditions of this order, applicants shall abide by the following directions :-

(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.

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

(**A.M. BADAR**)
JUDGE

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