

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

Criminal Application No. 5202 of 2016

District : Latur

Atul s/o. Hanmantrao Chate,
Age : 33 years,
Occupation : Service,
R/o. Chate Niwas,
Om Shanti Colony, Ambajogai,
Taluka : Ambajogai,
District : Beed,
At present R/o. Shri Rajsourabh
Society, Yeshwant Nagar,
Telco Chowk, Pimpri,
Dist. Pune.

.. Applicant.

versus

The State of Maharashtra,
Through Police Station, Kingaon,
Taluka : Ahmedpur,
District : Latur.

.. Respondent.

.....

Mr. Sudarshan J. Salunke, Advocate, for the applicant.

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

.....

CORAM : A.M. BADAR, J.

DATE : 29TH SEPTEMBER 2016

ORAL ORDER:

The applicant / accused in Crime No.
108/2016 for offences punishable under Sections 306,

498A, 323, 504, 506, read with Section 34 of the Indian Penal Code, registered with Police Station, Kingaon, Taluka Ahmedpur, District Latur, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that the FIR itself reflects that from 9th September 2013, deceased Swati was residing at her parental house and she committed suicide at the house of her parents itself on 27.07.2016. The learned Counsel drew my attention to the report of service of summons in petition for divorce lodged by the present applicant on Swati on 23.02.2016 and further argued that on the very same day, Swati lodged FIR against the applicant as well as her in-laws which has resulted in registration of Crime No. 23/2016 against the applicant and his relatives. It is further argued that then on 05.03.2016, Swati and the present applicant came to an agreement with regard to their matrimonial dispute and accordingly the agreement came to be scribed on the stamp-paper on that day. It was decided that Swati and the present applicant because of incompatibility will reside separately. It was decided that Swati and the applicant will take divorce to sever their matrimonial tie. It was further agreed that as permanent alimony, the applicant would pay an amount of Rs. 17,51,000/-. The learned Counsel further pointed out the pay in

slip as well as statement of account showing that an amount of Rs. 10,00,000/- came to be transferred to the account of father of Swati and thereafter Swati had given a statement that she had no complaint against the applicant and his relatives. With this, the learned Counsel for the applicant submitted that when the death is at parental house and when the deceased was residing separately from the applicant right from 09.09.2013, there is no question of subjecting her to cruelty or abetting commission of her suicide by the present applicant.

3. As against this, the learned Addl. Public Prosecutor opposed the application by contending that on the very same day of the incident i.e. on 27.07.2016, father of the present applicant had been to the parental house of Swati and he had threatened and abused Swati as well as her father Fulchand s/o. Ramkishan Tandale. The incident of self-effacement of Swati is fall out of this conduct of the father of the applicant and therefore, in submission of the learned Addl. Public Prosecutor, no case for pre-arrest bail is made out.

4. Perused papers of investigation including the FIR dated 27.07.2016 lodged by Fulchand s/o. Ramkishan Tandale - father of deceased Swati. It is seen from papers of investigation that Swati died suicidal death due to burns on 27.07.2016 itself at

her parental house at Chikhli. Record of investigation including the FIR lodged by her father goes to show that she married the applicant on 2nd June 2013 and she started residing with her father from 09.09.2013. It indicates that she was in company of the applicant and other accused persons for about three months in the year 2013. Thereafter, the FIR itself shows that she was residing with her parents at Chikhli.

5. Annexures to the application shows that the present applicant had lodged a petition under the Hindu Marriage Act against his wife Swati invoking the ground of cruelty. The same was registered as H.M.P. No.142/2015 and the summons thereof was served to deceased Swati on 23.02.2016 as per bailiff's report. On the very same day, on the basis of report lodged by Swati, Crime No. 23/2016 came to be registered against the present applicant and his relatives for offences punishable under Sections 498A, 323, 504, 566, read with Section 34 of the Indian Penal Code. It appears that during investigation of this crime, the couple sorted differences between them and decided to part their ways. The applicant has produced on record, an agreement dated 05.03.2016 executed between the applicant and deceased Swati. Recitals of this agreement goes to show that the couple decided to take divorce and it was agreed that the applicant

would pay permanent alimony of Rs. 17,51,000/- to Swati. The agreement as well as documents produced on record by the applicant shows that out of this amount, an amount of Rs. 10,00,000/- was already transferred to the account of informant Fulchand Tandale. Immediately on third day of this agreement, Swati gave her statement under Section 161 of the Cr.P.C. to Police mentioning that she has no grievance against accused persons and therefore "C" Summary came to be filed in Crime No. 23/2016.

6. Prima facie this material indicates that the matrimonial dispute between the parties was over by 05.03.2016. It is seen from papers of investigation that on the day of incident itself, co-accused Hanumant Chate, who is father of the applicant, had been to the parental house of Swati and he had abused and threatened Fulchand as well as Swati. This appears to be the reason of indulging in self-effacement by Swati. The applicant is not concerned with that incident which took place on 27.07.2016.

7. Abetment requires instigation, stimulation or active suggestion by the accused. Section 107 of the Code of Criminal Procedure requires *mens rea* and without knowledge and intention, there cannot be an abetment. As Swati was residing with her parents from 9th September 2013, *prima facie* it cannot be said that the applicant had stimulated her or

instigated her to commit suicide on 27.07.2016. Similarly, as Swati was with her parents since last so many years, *prima facie* it cannot be said that the applicant had subjected her to cruelty.

8. In the wake of such evidence available against the present applicant, his custodial interrogation is not warranted.

9. Hence, I pass the following order :-

(a) The Application is allowed.

(b) In the event of arrest of the applicant / accused in the above crime, he be released on bail on his executing P.R. Bond in the sum of Rs. 15,000/- and on furnishing one or more solvent sureties of the like amount.

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

(i) The applicant shall attend the concerned Police Station on 8th, 16th and 23rd October 2016 in between 11.00 a.m. and 01.00 p.m. and thereafter as and when reasonably called by the Investigation Officer for the purpose of investigation. The applicant shall cooperate the

Investigation Officer in investigation of the crime in question.

(ii) The applicant 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.

(iii) The applicant 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, in future against him.

(iv) The applicant shall not repeat commission of similar type of offences in future.

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

(A.M. BADAR)
JUDGE

.....