

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

912 CRIMINAL APPLICATION NO. 5495 OF 2016

**NAMDEO @ RAMESHWAR S/O
WALMIK MAGAR**

VERSUS

THE STATE OF MAHARASHTRA

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Mr. R.R.Karpe, Advocate for Applicant.

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

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CORAM : A.M.BADAR, J.

DATE : 14th OCTOBER, 2016

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PER COURT :

1. The applicant/accused in Crime No. I-104/2016 registered at Shivoor police station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable u/ss 498-A,304-B read with 34 of the Indian Penal Code, by this application is praying for releasing him on bail.

2. Heard the learned counsel for applicant/accused. He argued that the applicant is brother-in-law of deceased

Kalpana and the charge sheet shows that in fact dowry was already paid at the time of marriage itself. Therefore, according to the learned counsel, ingredients of the offence punishable u/s 304 of the Indian Penal Code are not made out from the charge sheet.

3. The learned A.P.P. opposed the application by contending that the crime in question is serious and Kalpana died within few months after her marriage with the brother of present applicant.

4. Perused the F.I.R. as well as the charge sheet. The crime in question is registered on the basis of the report of Kantabai Sopan Bharad – mother of deceased Kalpana. It is seen from the F.I.R. that the marriage was settled by deciding to give dowry of gold ornaments weighing 1 Tola. The F.I.R. itself shows that this dowry was paid or delivered at the time of marriage. The charge against present applicant and co-accused is for the offence punishable u/s 304-B of the Indian Penal code. However, requirement of Section 304-B of the Indian Penal Code is harassing or subjecting a married woman to cruelty or on account of dowry and death of married

woman within 7 years from her marriage. *Prima facie*, it is seen that dowry was already paid at the time of marriage itself. The allegations in respect of cruel treatment are giving tonts to deceased Kalpana on account of receipt of gas stove and hospitality in the marriage ceremony. Considering this averment vis-a-vis the definition of cruelty under explanation to Section 498-A of the Indian Penal Code, I am of the opinion that as co-accused have already been released on bail, further pre-trial detention of present applicant in the crime in question is not warranted. Hence, the following order.

- (i) The application is allowed.
- (ii) The applicant Namdeo @ Rameshwar s/o Walmik Magar in Crime No. I-104/2016 registered at Shivoor police station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable u/ss 498-A,304-B read with 34 of the Indian Penal Code 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, the 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) The applicant shall not tamper the evidence of the prosecution.

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

[A.M.BADAR, J.]