

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

CRIMINAL APPLICATION NO. 5952 OF 2016

Mahadu s/o. Namdeo More .. Applicant
Age. 70 years, Occ. Agri.,
R/o. Wakala, Tq. Vaijapur,
Dist. Aurangabad.

Versus

The State of Maharashtra .. Respondent

Mr.N.D. Sonavane, Advocate for the applicant.
Mr.S.M. Ganachari, APP for respondent/State.

CORAM : A.M. BADAR,J.
DATED : 27.10.2016

P.C. :-

1. The applicant/accused in Crime No. I-124 of 2016 registered with Shivoor Police Station, Tq. Vaijapur, Dist. Aurangabad, for offences punishable under sections 306, 498-A read with section 34 of the Indian Penal Code, by this application, is seeking his release on bail.

2. Heard learned Counsel for the applicant/accused. He argued that the F.I.R. prima facie does not make out offence alleged against the present applicant, who is an aged as well as infirm person.

3. Learned A.P.P. opposed the application by contending that version of the informant is supported by statements of two mediators, who were instrumental in settling the marriage. Statements of parental relatives of the deceased are also supporting the prosecution case.

4. I have considered the rival submissions and also perused papers of investigation. Learned Counsel for the applicant drew my attention to report dated 03.10.2016, submitted by the investigator to the learned J.M.F.C., Vaijapur, wherein it is mentioned that the offence punishable under section 306 of the Indian Penal Code is deleted from the case diary of the crime in question. This implies that now the charge levelled against the present applicant is in respect of offence punishable under sections 304-B, 498-A of the Indian Penal Code. The applicant is father-in-law of deceased Rupali @ Baijabai Shahadu More. She married son of the applicant in the year 2014. She was found dead in a well in village on 02.10.2016.

5. As the prosecution is alleging commission of offence punishable under section 304-B of the Indian Penal Code, let us put on record ingredients of the said offence, which requires :-

- a) Death of a woman caused by violence or bodily injuries or had occurred otherwise than in normal circumstances;
- b) Such death should have occurred within seven years of marriage;
- c) Deceased was subjected to cruelty or harassment by her husband or any relatives of her husband;
- d) Cruelty or harassment should be for or in connection with demand of dowry;
- e) Such cruelty or harassment should be soon before the death of such married woman.

6. If record of investigation is perused on these touch stones, it is seen from statements of parental relatives of the deceased as well as from mediators in the marriage that the deceased was being disliked by her husband and her parental relatives on the ground that she is having dark complexion, she is unable to do domestic work and she is unable to cook food. It is stated by the witnesses that for these reasons, the deceased was being harassed by her husband and in-laws. There are no averments that the deceased was being subjected to cruelty for and on account of demand of dowry.

7. In order to prove offence punishable under section 498-A of the Indian Penal Code, acts attributed to accused persons must put the victim thereof to intense miseries and woes, strongly steering up her feeling that the life is not worth living. Prima facie, it appears

that the averments in this crime reflects domestic cruelty and not matrimonial cruelty. The applicant is old person of 70 years of age. Therefore, his further pre-trial detention is not required. As such, the following order :-

O R D E R

- i) The application is allowed.
- ii) Applicant/accused - Mahadu s/o. Namdeo More in Crime No. I-124 of 2016 registered with Shivoor Police Station, Tq. Vaijapur, Dist. Aurangabad, for offences punishable under sections 306, 498-A read with section 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.

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iv) The applicant shall not tamper the evidence of the prosecution.

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

[A.M. BADAR, J.]