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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.670 OF 2016
WITH
CRIMINAL APPLICATION NO.370 OF 2016

Sachin Shankar Balghare	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

AND

Moreswar Maruti Matere	..Intervenor.
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Mr.Kuldeep Patil for the applicant.

Mr.Arfa Sait, APP for respondent-State.

Mr.Chetan G. Patil for intervenor.

CORAM : A.M.BADAR, J.

DATED : 29TH JUNE, 2016

P.C. :-

1. The applicant / accused In Crime No.39/2016 for offences punishable under sections 306, 498A read with 34 of the Indian Penal Code registered with Alibag Police Station, District Raigad by this application is praying for releasing him on bail.

2. Heard the learned counsel for the applicant as well as informant and the learned APP for the State. Learned APP as well as learned counsel for the informant argued that alleged dying declaration recorded on 15th March, 2015 is totally unbelievable. It does not stand to reason that a highly educated lady would consume poison and that too in large quantity. They further argued that as the deceased could not conceive and deliver a child out of the wedlock with the present applicant, she was subjected to harassment resulting in commission of suicide by her.

3. I have gone through the entire papers of investigation, including the F.I.R. The incident of ingestion of insecticide by Bharati Shankar Balghare happened on 15th March, 2016. She ultimately died on 16th March, 2016 at Sanjeevani Hospital. The C.A. Report shows that her viscera was containing organo phosphorous insecticide. The question would be whether the ingestion of insecticide was with a requisite intention to commit suicide or it was accident. This controversy will have to be resolved in the trial.

4. Promptly lodged F.I.R. by father of the deceased

shows that deceased married the present applicant four year priors to her death. The only averment against the present applicant which can be found in this promptly lodged F.I.R. is to the effect that the present applicant and co-accused were mentally harassing the deceased as the deceased was unable to bear a child. The details of the so called harassment are conspicuously absent in the F.I.R. lodged by the father.

5. Similar is the averment in the statements of Ganesh Matore and Shailesh Matore, who are parental relatives of the deceased.

6. Cruelty as explained in section 498A of the Indian Penal Code requires a willful conduct of certain intensity and persistence, which is likely to drive a married woman to commit suicide. There is statement of one neighbourer which shows that the applicant and co-accused were taunting the deceased as she could not bear a child. *Prima facie*, the material collected by the Investigator does reflect legal cruelty to the deceased to constitute an offence punishable under section 498A of the Indian Penal Code. Similarly, for abetment, instigation, provocation and incitement to the

deceased to commit suicide is essential. Mere one allegation that accused were mentally harassing the deceased, prima facie, do not constitute abetment.

7. Be that as it may, as asked by this Court, the learned APP has shown the medical case papers of deceased Bharati Balghare. Bharati was admitted to Civil Hospital, Alibag. At the time of her admission, her general condition was moderate. Medical case papers of Bharati shows that she was conscious and oriented when she was admitted to that hospital. During her stay at the hospital, on the day of the incident itself, her statement came to be recorded and as it relates to the circumstances leading to her death, it can safely be looked into as her dying declaration. This dying declaration of Bharati bears an endorsement of the Medical Officer attached to the Civil Hospital of Alibag. It reflects that prior to and after recording of her dying declaration, deceased Bharati was conscious and oriented. The Medical Officer has declared her to be fit to give a statement. This dying declaration of deceased Bharati suggests incident of ingestion of poisonous substance accidentally at her house.

8. In the light of this material against the present applicant, his personal liberty gets precedence over his custodial interrogation. Hence the order :-

- (i) The applicant / accused in No.39/2016 for offences punishable under sections 306, 498A read with 34 of the Indian Penal Code registered with Alibag Police Station, District Raigad be released on bail on his executing P.R. bond in the sum of Rs.5,000/- with one surety in the like amount;
- (ii) As a condition of this order, the applicant / accused shall attend Alibag Police Station, Raigad on 3rd and 10th July, 2016 between 11.00 a.m. till 1.00 p.m.;
- (iii) The applicant / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him / her from disclosing such facts either to the Court or to any police officer and that he shall not tamper with the evidence;

- (iv) The applicant / accused shall co-operate for expeditious disposal of the trial;
- (v) The applicant / accused shall not commit an offence similar to the offence of which he is accused or suspected of the commission;
- (vi) The application is disposed of accordingly.

(A.M.BADAR, J.)