

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 820 OF 2016

Vivek Shivashray Yadav. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. S.R. Phanse, advocate for Applicant.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : SEPTEMBER 14, 2016

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers of investigation.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is charge-sheeted for the offence punishable under Section 302, 498A, 406 of the Indian Penal Code in crime No. 105 of 2015 registered at New Panvel Police

Station on 7/8/2015. The investigation was completed and charge-sheet is filed on 4/11/2015.

3 It is the case of the prosecution that the present applicant got married to Chanda on 14th May, 2015. Initially, the couple was residing at Mumbai. On 7/7/2015 Chanda had informed her mother that she is residing with applicant at Panvel. On 7/8/2016 Chhotelal Yadav i.e. father of Chanda had lodged report at the police station that on 28/7/2016 his sister-in-law namely Sunita had informed him that Chanda had conceived pregnancy and is two months pregnant. It was also disclosed that Sunita had learnt that sister of the present applicant is yet to get married and therefore, Chanda should not be continued to carry pregnancy, as it would bring bad reputation to the family. Chanda had disclosed to Sunita that she is being assaulted by the present applicant under the influence of alcohol and that he is coercing her to abort the pregnancy.

4 It is further alleged in the first information report that on 2/8/2015 one Santosh called upon the first informant and informed him that Chanda had sustained burn injuries and that she is admitted in Sion Hospital. The caller had further informed the father that he had spent about Rs. 45,000/- for medical expenses and that they should return the same. The caller had continued to call upon the first informant. Upon enquiry he had disclosed that the present applicant had also sustained burn injuries and is admitted in hospital. It is also alleged that the present applicant did not speak to his father-in-law.

5 Subsequently, one person called Shrikant had called first-informant and had demanded Rs. 80,000/- towards expenses for medical treatment of Chanda and her husband.

6 On 3/8/2015 the first informant and his cousin left for Mumbai. They are original residents of Fulpur District Uttar Pradesh. On 5/8/2015 the first informant had been to Sion Hospital at Mumbai.

He enquired with the present applicant. The present applicant had not disclosed anything to the first informant. However, from the persons who were present, the first-informant had learnt that dead body of Chanda had been kept in morgue. She had succumbed to the burn injuries on 1/8/2015. However, post mortem was not conducted on the dead body since the doctors were of the opinion that autopsy should not be performed till her relatives arrived from Uttar Pradesh. It prima facie appears that Chanda had died an homicidal death. She was taken to the hospital by the applicant and his friend and they had disclosed to the doctor that Chanda had sustained burn injuries while cooking on stove.

7 The papers of investigation would reveal that on 29/7/2015 itself, the scene of offence panchanama was recorded, which shows that the mat in the bedroom was found to be half burn. There was no stove in the house, instead, it appears that they were cooking on electric hot plate. Traces of kerosene were seen in the hall. There was evidence of burn in the bed room also. Upon perusal of the

papers of investigation, it prima facie reveals that Chanda had died an homicidal death at the hands of the present applicant. It is a case of custodial death. At the time of incident, Chanda was carrying pregnancy of more than two months. Moreover, the applicant was at home and he has not even informed the parents of Chanda about the burn injuries sustained by her or her death. Since they were being coerced by known persons to make payment, they had come to Mumbai.

8 Taking into consideration the nature of allegations and the papers of investigation, this Court is of the opinion that the applicant does not deserve to be enlarged on bail. The application being sans merits deserves to be rejected.

9 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The co-accused who are in custody shall not claim parity with the present

applicant. It is also made clear that the learned Sessions Judge shall not be influenced by the above observations at the time of trial.

10 The application stands dismissed and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)