

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

CRI. BAIL APPLICATION NO. 976 OF 2016

Shri Suman Dashrath Gade ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

WITH

CRI. BAIL APPLICATION NO. 977 OF 2016

Shri Dashrath Namdeo Gade ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Vikas B. Shivarkar, Advocate for the Applicant in both BAs.

Mr. Arfan Sait, A.P.P. for the State in BA No.976/2016.

Ms. Veera Shinde, A.P.P. for the State in BA No.977/2016.

PI - A. R. Targe, (Vani Police Station, Dist. Nashik) is present.

CORAM : A. M. BADAR, J.

DATE : 16th JUNE, 2016

P.C. :

1 Both Applicants/accused in Crime No. I-99 of 2015 for the offences punishable under sections 302, 498(A), 304(B) read with section 34 of the Indian Penal Code registered with Vani Police Station, Nashik at the instance of the informant – Babasaheb Bhikaji Kumbharkar, by these applications are praying for releasing them on bail.

2 Applicant-Suman in bail application no. 976 of 2016 is the mother-in-law, whereas applicant-Dashrath in bail application no. 977 of 2016 is father-in-law of deceased Rupali Chetan Gade, who died at her matrimonial house at Shindwad, Tal. Dindori, Dist. Nashik on 23th August, 2015 by hanging.

3 Heard the learned counsel appearing for Applicants /accused as well as the learned APP for the State. Learned counsel for Applicants argued that both the applicants/accused were not even present at the very house which was being shared by deceased-Rupali and her husband Chetan. Learned counsel argued that averments made in the FIR as well as in statements of witnesses do not reflect cruelty and, therefore, prima facie, offence punishable under section 304(B) cannot be inferred.

4 Learned APP argued that though in the report of the custodial death, applicant - Dashrath has informed that his son had informed him about the incident at 11 a.m., the statement of Bhika Lakha Pawar shows that Chetan (husband of Rupali) was in the farm even upto 1 p.m.. Learned APP further argued that call detail records of cell phones of Chetan and his father - Dashrath do not show that they were getting

with each other and more particularly at 11 a.m. on 23th August, 2015 i.e. the date of incident.

5 Perused the charge-sheet. During the investigation, the investigating officer has recorded statement of one Dnyaneshwar V. Waste, which shows that on 23rd August, 2015 at about 1.05 p.m. he received phone call from applicant-Dashrath and he was requested by Dasharat to rush to his house (Dashrath's house) in order to ascertain what happened there. Dnyaneshwar is resident of Shindwad, Tal. Dindori. According to applicants on 23rd August, 2015 when the incident in question happened they had been at the village Khambale for attending 10th day rituals of some relative and as such they were not present at the spot of incident.

6 Perusal of the FIR as well as statements of the witnesses goes to show that Chetan married Rupali (since deceased) on 24th April, 2012 and she died otherwise than in the normal circumstances at her matrimonial house on 23rd August, 2015 i.e. within seven years of her marriage. For making out the offence punishable under section 304(B) i.e. dowry death, the prosecution is required to establish that soon before the death, the deceased was subjected to cruelty or harassment in connection with the demand of dowry and that the death of a married woman occurred within 7 years of her marriage caused by burns or bodily injury or otherwise than in

the normal circumstances. As such, the main ingredient is “cruelty” or “harassment” soon before the death of a married woman and that too in connection with the demand of dowry. For the purpose of section 304(B) the term “dowry” has the same meaning as defined under the provisions of the Dowry Prohibition Act.

7 In the light of this requirement, let us prima facie examine what are the allegations against the applicants. The FIR as well as the statements of witnesses, prima facie, show that after the marriage, in January, 2013 when Rupali had been to her parental house she disclosed demand of Rs. One lakh by the accused persons for purchase of a pick-up van. The allegations of cruelty as well as demand of dowry are conspicuously absent in this FIR. According to the prosecution case, thereafter, Rupali used to disclose to her parents that the accused persons were used to ask her to bring at least one tola gold from her parents and that they used to harass her for want of the same. It is further averred that food was not provided to her properly. It is alleged that in March, 2015 taunts were given to the parents of Rupali for payment regarding delivery. The term “cruelty” as defined in explanation to section 498-A of the Indian Penal Code, requires harassment or coercing to a married woman and as such harassment is required to be of such intensity to drive a married woman to commit suicide or bodily harm/injury. For attracting penal consequences under

section 304(B), legal cruelty is required to be exhibited and that too inflected soon before the death for demand of dowry.

8 So far as offence under section 302 of IPC is concerned, there appears to be no prima facie evidence against present applicants. They do not appear to be in the house when incident happened. Considering the nature of the offence and the fact of filing of the charge-sheet, detaining the applicants till conclusion of the trial is not warranted. Hence, the following order on both the applications :-

ORDER

- i. Both the applications are allowed.
- ii. Both applicants/accused in Crime No. I-99 of 2015 for the offences punishable under sections 302, 498(A), 304(B) read with section 34 of the Indian Penal Code, registered with Vani Police Station, Nashik at the instance of the informant - Babasaheb Bhikaji Kumbharkar, till disposal of the trial, be released on bail on executing P.R. Bond in the sum of Rs. 5000/- each, and on furnishing solvent surety in the like amounts.

- iii. As a condition of this order, the Applicants shall not tamper with the prosecution evidence in any manner.
- iv. In addition, the Applicants/accused are directed that they shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against them so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicants shall not tamper with the prosecution evidence in any manner.
- v. The applicants should co-operate the trial court in expeditious disposal of the trial.
- vi. Both bail applications are disposed of accordingly.

(A. M. BADAR, J.)

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