

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

CRI. BAIL APPLICATION NO. 1097 OF 2016

Mr. Tushar Madhukar Kushare ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Kuldeep S. Patil, Advocate for the Applicant.

Mr. Arfan Sait, A.P.P. for the Respondent – State.

Head Constable -Mr. S.D.Jadhav (Pimpalgaon Baswant Police Station, Nashik) is present.

CORAM : A. M. BADAR, J.

DATE : 07th JULY, 2016

P.C. :

1 Heard the learned counsel appearing for the applicant/accused. He argued that bare perusal of the FIR reveals that the deceased wife was not subjected to a sex selection test. Learned counsel further argued that perusal of the FIR would not reveal that the deceased was subjected to harassment on account of demand of dowry. It is contended that this is a first bail application of the applicant before this court and as such it needs to be allowed as pre-trial detention of the applicant is not warranted.

2 Learned APP opposed the application by stating that on 26.9.2014, deceased-Surekha was subjected to a

sonography test and thereafter on 08.11.2014 she died. The learned APP further argued that her death occurred within few months of her marriage with present applicant and as the same is occurred otherwise than in the normal circumstances, presumption as envisaged by the provisions of Evidence Act, is attracted and as such considering the nature of the crime, the applicant is not entitled for pre-arrest bail.

3 Perused the charge-sheet. Deceased-Surekha married the present applicant on 11.05.2014 and thereafter, she started cohabiting with the present applicant and co-accused. On 08.11.2014 Surekha died. CA report of viscera shows detection of Organophosphorus insecticide Dichlorvos (Nuvan) with the fatal level. Perusal of the FIR as well as statement of the witnesses also goes to show that Surekha conceived after marriage and the applicant and co-accused were insisting her to under go sex selection test. Surekha refused. It is also averred that present applicant and the mother-in-law of Surekha were asking Surekha to bring an amount of Rs. 2 lakhs for maintenance of a female child which was still in her womb. This was on assumption that Surekha would deliver a female child. It is further averred that on refusal to bring the amount so demanded they used to abuse her and beat her by means of fists and slaps.

4 Requirement of section 304(B) is subjecting a married woman about cruelty and harassment for or in connection with any demand of dowry. The term “dowry” used in Section 304(B) of the Indian Penal Code has the same meaning as attributed to it in Section 2 of the Dowry Prohibition Act, 1968.

5 Now the investigation is over. Charge-sheet is filed. Considering the nature of the evidence against the present applicant and the fact that the trial will take its own time, pre-trial detention of the applicant is not warranted and therefore, the order :

ORDER

- i. The bail application is allowed.
- ii. The applicant/accused in Crime No. I-137 of 2014 registered with Pimpalgaon Baswant Police Station Dist. Nashik for the offence punishable under sections 498(A), 304-B, 306, 504, 506 r/w. 34 of the Indian Penal Code, be released on bail on executing a PR Bond in the sum of Rs. 5000/- and on furnishing solvent surety in the like amount.
- iii. As a condition of this order, the Applicant/accused is directed that he 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 such person from disclosing such facts either to the Court or to any police officer and that applicant shall not tamper with the prosecution evidence in any manner.

- iv. The applicant should not commit offence of similar nature in future.
- v. The applicant should co-operate the trial court in expeditious disposal of the trial.
- vi. The bail application is disposed of accordingly.

(A. M. BADAR, J.)

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