

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1830 OF 2016

Dipak Abhiman Kondalkar

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Ashish S. Sawant Advocate for Applicant.

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

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : OCTOBER 18, 2016.

PC :

1) Heard. This is an application under section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested on 08/03/2016 in crime no. 89 of 2016 registered at Karmala Police Station for offence punishable under sections 302, 201, 111 r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that applicant herein was married to Archana 7 years ago. That the couple was blessed with two daughters. On 11/02/2016, wife of the applicant had delivered another baby girl. It is the case of the prosecution that applicant was harassing his wife on the ground that she has given birth to three girls consecutively and he did not wish to

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have a daughter on the third occasion. It is alleged that on this ground, he had harassed his wife, abused her and assaulted her.

3) On 02/03/2016, Police Sub Inspector Sachin Gorakh posted at Karmala Police Station lodged a report alleging therein that the dead body of a child was found floating in the well situated in Gat No. 24 of village Pangare, Tal. Karmala. Police had reached the spot and had removed the dead body of one month old child.

4) On 01/03/2016, Vaijanta Devkar who happens to be mother-in-law of the present applicant had approached the police station and had informed that on 27/02/2016, her daughter Archana had left the house with her new born child. It was learnt that she was in Ashti, Tal. Mohol. That police had informed her about the dead body which was found in the well and therein she had disclosed to the police that husband of Archana i.e. present applicant had continuously assaulted her on the ground that she has given birth to a baby girl for third time and being enraged with the said treatment meted out to her, she had left the house with the child and thrown the child in the well. On the basis of the said disclosure, crime no. 89 of 2016 was registered at Karmala Police Station against applicant and his wife for offence punishable

under sections 302, 201 of the Indian Penal Code. Wife of the present applicant is original accused no. 1.

5) It is pertinent to note that wife of the applicant was being harassed by him on the ground that she had delivered third baby girl. The conduct itself is heinous, however, it would amount to an offence punishable under section 498 (A) of the Indian Penal Code. It appears that the helpless wife of the present applicant was in post-partum stage and without taking into consideration her mental state, applicant had harassed her to such an extent that she had abandoned the baby girl. It cannot be said that applicant had instigated or abetted his wife to abandon or eliminate the baby girl. She had left the house on her own accord and it was her decision, in a hope that she could save herself from the harassment of her husband.

6) In the facts of the case, at this stage, it cannot be said that applicant has committed an offence under section 302 of the Indian Penal Code. Applicant is in custody for more than 6 months. Investigation is completed and charge-sheet is filed. Hence, applicant deserves to be enlarged on bail. It is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be

taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.
- (iii) Applicant shall report to Karmala Police Station on first Sunday of each month, till framing of the charge.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)