

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1122 OF 2016

IN

CRIMINAL APPEAL NO.604 OF 2016

WITH

CRIMINAL APPLICATION NO.1123 OF 2016

IN

CRIMINAL APPEAL NO.604 OF 2016

Dhiraj Gulabrao Uphat

.. Applicant

Versus

The State of Maharashtra

.. Respondent

Mr.Apoorv Singh Advocate for the applicant.

Ms.V.S.Mhaispurkar, APP for the Respondent State.

CORAM : PN. DESHMUKH, J

DATED : 7th SEPTEMBER 2016

P.C. :

1 These applications are for suspension of substantive sentence imposed upon the applicant and for grant of bail by accused who is convicted for the offence punishable u/s.306 IPC, and is sentenced to undergo RI for 5 years and to pay fine of Rs.20,000/- in default of payment of fine to suffer RI for six months, and who is further convicted for the offence punishable u/s.498A of the IPC and is sentenced to suffer RI for 1 year and to pay fine of Rs.5,000/- in default of payment of fine to suffer RI for six months. Both the sentences are directed to run concurrently.

2 Learned counsel for the applicant by referring to the evidence of witnesses on record has submitted that the observations of the learned Sessions Court are contrary to evidence on record, as from the evidence of complainant, PW 1 – father of deceased as well as PW 4 – mother of deceased, no ingredients of charge levelled against the applicant, can be said to be established. It is thus contended that applications be allowed.

3 Learned APP, on the contrary, by referring to said evidence as well as evidence of PW 2 – sister of deceased, has submitted that their evidence establish continuous ill-treatment provided by applicant to deceased who thus committed suicide by hanging in her matrimonial home. It is thus prayed that application be rejected.

4 In the light of submissions advanced, as aforesaid, it is found that the learned Sessions Court on the strength of available evidence on record, has noted that while deceased Ketki was cohabiting with the applicant and her mother-in-law, they have subjected her to cruelty on the ground of dowry, as they used to torture her on the pretext that her father had only two daughters and as such, can provide Rs.20 lakhs to 25 lakhs to accused for purchasing flat in Mumbai.

5 Learned Sessions Judge from the evidence on record has further observed that on 21st November 2011, i.e. one day prior to incident, applicants have indulged in quarrel with deceased and man-handled her and assaulted by kick blows, and had drove her out of the house.

6 With reference to above findings of the learned Sessions Judge on perusal of evidence of PW 1 – complainant – father of deceased, he is found to have deposed that mother-in-law of deceased used to say to her that father of deceased has only two daughters, and therefore, amount of Rs.20 lakhs to Rs.25 lakhs should be paid to accused to arrange for a house in Mumbai. It is thus material to note that there is not a whisper in his evidence involving applicant to demand Rs.20 lakhs to Rs.25 lakhs as noted by the learned Sessions Judge, as it is specifically stated that such demand is by mother-in-law of deceased.

7 Similarly, with regards to alleged incident of 22nd November 2011, evidence of PW 4 – mother of deceased when perused, reveals that said witness in clear terms had admitted that deceased has never told her that applicant has driven her out of the house by man-handling her, by giving kick blows. As such, it is found that there is nothing on record with reference to alleged incident of dated 21st November 2011 about applicants quarelling with deceased and by man-handling her, to drive her out of the house.

8 From the evidence of PW 2 – sister of deceased as relied by learned APP, it is noted that her evidence is too vague as she has stated that after the marriage, she used to contact deceased on phone when she used to inform her of continuous quarrel with her and about applicant's not talking to her for 4 – 8 days. Thus, from her evidence it cannot be said if applicant or any other relative of her husband was continuously quarreling with

her.

9 In that view of the matter, her evidence appears to be vague in the sense that same is silent as to who was continuously quarreling with the deceased. Admittedly, along with applicant, his mother was also charge-sheeted. However, applicant's mother came to be discharged by the Sessions Court.

10 Considering evidence as discussed above and as conviction imposed upon applicant u/s.306 IPC for 5 years, same can be termed as short sentence and as applicant, pending trial was on bail and has already paid the fine amount, application is allowed as per order below.

O R D E R

Applicant shall be released on bail on his executing PR. Bond in the sum of Rs.25,000/- with one surety in like amount.

Applicant, while on bail, shall mark his presence with Saki Naka Police Station once in six months and shall produce proof of his residence in Mumbai.

Applicant shall update his residential address if there is any change in it in future.

(PN. DESHMUKH, J)