

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.20 OF 2016

Mohammad Saheb S/o Abdul Shahid and anr

-vs-

State of Maharashtra, through Police Station Officer, Police Station, Nandura, District
Buldana

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Sirpurkar, counsel for the Applicants.
Shri A.K. Bangadkar, Addl.P.P. for the NA/State.

CORAM : V. M. DESHPANDE, J.

DATE : MARCH 11, 2016.

Applicant No.1 Mohd. Saheb S/o Abdul Shahid approached to this Court before filing the present application along with other accused persons. The said application was registered as Criminal Application (BA) No.783 of 2015. The said application was filed before this Court after filing of the charge-sheet. This Court heard the said application on 29.10.2015. After hearing learned Counsel for the applicants, in that application, when this Court was about to dismiss the application, a prayer was made by learned counsel for the applicants that he has instructions to withdraw the application and, therefore, the application was allowed to be withdrawn.

Applicant No.2 Nazim S/o Mohammad

Saheb also approached before this Court prior to filing of the present application along with other co-accused persons by moving Criminal Application (BA) No.481 of 2015. The said application was filed, prior to filing of the charge-sheet, before the Court. This Court, on 4.8.2015, heard the matter and, thereafter, accepted the prayer of learned counsel for the applicants to withdraw the said application.

Thus, the present application is the second attempt on the part of both the applicants to secure bail from this Court.

Heard learned counsel for the applicants Shri S.V. Sirpurkar extensively and also learned Additional Public Prosecutor Shri A.K. Bangadkar.

The applicants are facing the prosecution and they are in jail in connection with Crime No.70 of 2015 registered with police station Nandura, District Buldana for the offences punishable under Sections 323, 302, 498(A), and 201 read with Section 34 of the Indian Penal Code.

Deceased is Saymabee Parveen. The applicants are the father-in-law and brother-in-law of deceased Saymabee Parveen.

At the time of homicidal death,

unfortunate Saymabee Parveen was carrying pregnancy and at the time of expectation of motherhood, her life was cut short. The submission of learned counsel for the applicants Shri S.V. Sirpurkar is that the applicants are not responsible for her death. According to learned counsel, from the statements of the prosecution witnesses itself, at the time of commission of offence, both these applicants were not available in the house but they were near Urdu school. He further submitted, by taking the advantage of the charge-sheet that the offences are registered against only for the offences punishable under Sections 498(A) and 201 of the Code of Criminal Procedure. He, therefore, submits that the applicants be released on bail.

Learned counsel for the applicants Shri S.V. Sirpurkar vehemently submits that against them the offences are registered only for the offences punishable under Sections 498(A) and 201 on the basis of particulars of accused charge-sheeted. The case of the prosecution has to read as whole. Therefore, merely because the offence under Section 302 is not typed in the particulars of the accused persons charge-sheeted, it cannot be helpful to the applicants.

The autopsy surgeon, while conducting the

post-mortem over the dead body, found the following injuries :

“Bruise over left forearm over dorsal aspect measuring 6 x 2 cm and other 4 x 1 cm.

Bruise over right upper arm over flexi aspect 2 x 1 cm and over lateral aspect 1 x 1 cm.

Cyanosis present over chest region.

Ligature mark present in front aspect of neck extending from base of right ear to base of left ear measuring 20 x 0.5 cm.

Old and healed abrasions 6 in number over chest region measuring each 0.1 x 1 cm.

Old and healed wound scar over left leg

Fungal infection over left upper arms on mediel side 1 x 1 cm.”

From the post-mortem, thus, it is clear that a ligature mark was present in the front aspect of neck extending from base of right ear to base of left ear which admeasures 20 x 0.5 c.m.. On opening of the dead body, the doctor noticed the existence of fracture at the base on skull vault in the posterior aspect. The opinion of the medical officer shows that the skull vault fracture is possible if the nylon rope is

tied to the neck behind the back.

Insofar as applicant No.1 is concerned, the present application is the second application after filing of the charge-sheet. No doubt, the applicants have right to file successive bail application. However, for that it is obligatory on the part of such applicants to show change in circumstance. In the present case, applicant No.1 could not demonstrate any change of circumstance. Obviously, the first application, on behalf of applicant No.1, was withdrawn because this Court was about to dismiss the application. Thus, this Court has already expressed its view during the course of the hearing of the said application. Therefore, the present application of the applicants, on this count alone itself, is required to be rejected apart from the merits.

The deceased was married to Abdul Kalim in the year 2013 and the place of death is her matrimonial house. It is not the case of the applicants that they are residing separately from the deceased and her husband. Thus, the case in larger spectrum falls in the category of custodial death.

The first information report is lodged by Shaikh Usman Shaikh Gani, the father of unfortunate

deceased. The date of occurrence is 27.5.2015. The first information report is lodged on 27.5.2015 itself. Thus, the first information report is lodged immediately. Lodging of immediate first information report rules out the possibility of the false implication.

From the first information report it is clear that Saymabee Parveen's pregnancy was her second pregnancy. She was having a female child and at the time of her death, she was only ten months old. As per the statement of accusation made in the first information report, after Saymabee Parveen delivered a female child, she was subjected to cruelty at the hands of the present applicants and other family members. She was put on starvation though she expecting motherhood. These facts were communicated to the first informant and she was required to take shelter of her parental house. The first informant tried his level best to give a word of advice to the applicants and other family members for not to cause ill-treatment to his daughter.

Prior to the incident of one month, deceased was brought to parental house by her husband and she was left there. After fifteen days, her husband and one Sheru came to the house of the first informant and requested for sending the deceased to her matrimonial house, initially, the first

informant was not ready to allow the deceased to go to her matrimonial house. However, on the assurance given by said Sheru, the first informant allowed her daughter to accompany her husband for going to her matrimonial house.

The atrocities on a married woman are always within the four corners of wall. Therefore, at least, at the stage of consideration of the application for bail, much importance cannot be given to the fact that there are no eyewitnesses for the ill-treatment.

Insofar as the seating of applicants near Urdu school is concerned, the statement of witnesses shows that these applicants came there at about 1:30 p.m. i.e. in near proximity of the time of death at their home. Presently, the Court is not expected to evaluate the case of prosecution, in much detail, therefore, much importance cannot be attached at this stage in respect of timing.

Further, the applicants were residing with the deceased at the time of her death. Therefore, learned Additional Public Prosecutor for the non-applicant/State is right in making the submission about the presumption against the present applicants. The material available on record shows that the complicity of the present applicants and,

therefore, at this stage, the applicants cannot be released on bail. Hence, the application is rejected.

JUDGE

!! BRW !!