

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

CRIMINAL APPLICATION (APPLN) NO.11/2016

Bhagwan s/o Tukaram Jadhao

..Versus..

The State of Maharashtra, through P.S.O. P.S. Amdapur, Distt. Buldhana and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 6.5.2016

Heard Shri R.M. Daga, advocate for the complainant, Shri Ram Karode, advocate for the non-applicants 2 to 4 and Shri R.S. Nayak, A.P.P. for the non-applicant no.1.

The applicant - complainant (father of deceased) has filed this application under Section 439(2) of the Code of Criminal Procedure praying that the order passed by the learned Sessions Judge granting bail to the non-applicants 2 to 4 be set aside and the bail granted to the non-applicants 2 to 4 be cancelled.

Shri Daga, advocate for the applicant has submitted that the learned Sessions Judge has not adverted to the relevant aspects and gravity of the offence while granting bail to the non-applicants 2 to 4. It is submitted that the deceased committed suicide in her

matrimonial house within five years of marriage and according to the complainant it is on the record that the deceased had complained about ill-treatment eight days prior to the incident. It is submitted that the learned Sessions Judge has not considered these aspects. Reliance is placed on the judgment given in the case of *Puran V/s. Rambilas and another* reported in **(2001) 6 SCC 338** and the note of caution given by the Hon'ble Supreme Court in the judgment given in the case of *Samunder Singh V/s. State of Rajasthan and others* reported in **AIR 1987 SC 737**.

Shri Nayak, learned A.P.P. has supported the applicant.

Shri Ram Karode, advocate for the non-applicants 2 to 4 has submitted that the learned Sessions Judge has rightly observed that the further custody of non-applicants 2 to 4 was not required for investigation and, therefore, it cannot be said that the order granting bail is not proper. It is submitted that the non-applicants 2 to 4 are released on bail in February, 2016 and the State of Maharashtra has not approached this Court for cancellation of bail on the ground that the custody of non-applicants 2 to 4 is required for further investigation. It is further submitted that there is no complaint that these non-applicants have misused the liberty. It is prayed that the application be dismissed.

On going through the copy of F.I.R. and the order passed by the learned Sessions Judge, I find that the learned Sessions Judge has not considered all the aspects which should have been considered while disposing the application filed by the non-applicants 2 to 4. Considering the proposition laid down in the judgment given in the case of *Puran V/s. Rambilas and another* (cited supra) and the judgment given in the case of *Samunder Singh V/s. State of Rajasthan and others* (cited supra) it has to be recorded that the order passed by the learned Sessions Judge granting bail to the non-applicants 2 to 4 is not proper.

However, after hearing the learned advocates for the respective parties, I find that the applicant and the non-applicant no.1 - State of Maharashtra has not been able to show that the custody of non-applicant no.3 (father-in-law of deceased) and of non-applicant no.4 (mother-in-law of deceased) is required for further investigation. In my view, it would be sufficient to modify the order passed by the learned Sessions Judge to the extent it directs the release of non-applicant no.2 on bail.

Hence, the following order:

- (i) The order passed by the learned Sessions Judge in Bail Application No.32/2016 on 5th February, 2016 is modified.

- (ii) The order directing release of non-applicants 3 and 4 on bail is maintained.
- (iii) The order directing the release of non-applicant no.2 on bail is set aside and the bail granted to the non-applicant no.2 - Kailash Gulabrao Gaikwad is cancelled.
- (iv) The application is partly allowed in the above terms.

JUDGE

Tambaskar.