

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

CRIMINAL APPLICATION (BA) NO.1001 OF 2016

(Yogesh s/o Motiram Gaidhane ..vs.. The State of Maharashtra, through PSO, PS Kuhi, District
Nagpur)

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

Court's or Judge's orders

Shri R.M. Daga, Advocate for the applicant,
Shri A.V. Palshikar, Addl.P.P. for the non-applicant.

CORAM : P.N. DESHMUKH, J.

DATED : 02-12-2016

Heard Shri R.M. Daga, learned Advocate for applicant and Shri A.V. Palshikar, learned Additional Public Prosecutor for non-applicant.

This application is filed by husband of deceased Jyoti for bail in Crime No.30/2016 initially registered for offences punishable under Sections 304-B, 306 read with Section 34 of the Indian Penal Code wherein during the course of investigation offence punishable under Section 302 of the Indian Penal Code came to be registered.

Learned Counsel for applicant has primarily sought bail on the ground of parity with co-accused Motiram Gaidhane and Shobhabai Gaidhane, in-laws of deceased who are released on bail by the learned Sessions Court, contending that the role attributed to present applicant as well as co-accused is just and similar in nature. By referring to the contents of report, it is also

contended that applicant is also entitled to bail on merits as from the contents of report allegations of ill-treatment alleged to have been provided are vague.

It is further contended that prosecution has even not placed on record final cause of death certificate of deceased though charge-sheet is filed and the death has occurred under unnatural circumstances. It is, therefore, prayed that in view of the facts as aforesaid application be allowed.

Learned Additional Public Prosecutor opposed the application contending that the cause of death is due to respiratory failure due to asphyxia and secondary to strangulation. However, admittedly there is no final cause of death certificate on record, no specific explanation is put forth as to why said document is not procured till filing of charge-sheet.

Perusal of report reveals that applicant was married to deceased on 06-05-2015 and apart from other ornaments 5 gm. gold ring was given to applicant in the marriage reception upon which co-accused i.e. father of applicant informed complainant who is father of deceased as to why ring was not of 6 gm. upon which complainant said that he married his daughter with applicant as applicant was informed to be in service, however, he was not doing any such job and there was

quarrel between them. In the background of above stated facts, it is further alleged that eight days prior to incident, applicant had demanded Rs.30,000/- for purchasing motorcycle. Apparently said demand was to complainant and not to deceased. From other contents of report, as regards to alleged ill-treatment, same appears to totally vague and *prima facie* do not attract provisions of Section 498-A of the Indian Penal Code as what is complaint of father of deceased is that applicant and in-laws of deceased were providing ill-treatment to her on the issues like serving food and to bring water in the field or co-accused/father-in-law directing her to sit next to him while having meals and while she serving meals to him, etc. The allegations as such do not establish cruelty within the meaning as contemplated under Section 498-A of the Indian Penal Code.

Except for contents of report as abovesaid, nothing has been brought on record to establish involvement of applicant for offence punishable under Section 302 of the Indian Penal Code.

In that view of the matter and as according to the charge-sheet, role attributed to all the accused which are three in number in the present crime is similar and as two co-accused are already granted bail, application is liable to be allowed as case of applicant is found to be similar with that of his parents. In the circumstances,

following order is passed.

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

Applicant shall attend Investigating Officer at Kuhi, District Nagpur once in three months on first day of each such month pending trial.

Applicant shall supply proof of residence and shall update the same in the event of change of residence in future.

Application is allowed.

JUDGE