

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

37 CRIMINAL APPLICATION NO. 1509 OF 2017

BALASAHEB S/O. EKNATH OHALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Applicant : Mr. N.B. Narwade
APP for Respondent/State : Mr. A.R. Borulkar
Advocate for Respondents 2 to 5 : Mr. C.R. Thorat
...

CORAM : T.V. NALAWADE, J.
DATED : April 24, 2017.

ORDER :

1. The application is filed under section 439 (2) of Criminal Procedure Code (Cr.P.C.) for cancellation of anticipatory bail granted in favour of respondent Nos. 2 to 5 in Criminal Misc. Application No. 273/2017, which was pending in Sessions Court, Ahmednagar. The Sessions Court has granted the relief in C.R. No. 126/2017 registered in Pathardi Police Station, District Ahmednagar against these respondents for the offences punishable under sections 498-A, 304-B, 506 and 34 of Indian Penal Code (I.P.C.). Both the sides are heard. The papers of investigation were made available by the learned APP and the APP also submitted that the relief granted needs to be cancelled as the investigation is hampered.

2. The crime is registered on the basis of report given by Balasaheb Ohale, father of deceased Sarika. Sarika was given in marriage to respondent No. 2 Sandeep Shelke on 1.2.2016. Respondent Nos. 3 and 4 are the parents of respondent No. 2 and respondent No. 5 is brother of respondent No. 2. It is contended that after marriage, Sarika cohabited with respondent No. 2 Sandeep in the house where all the respondents were living together. Allegations are made that in the marriage, dowry of Rs. six lakh was given and ornaments were also given, but the husband and his relatives were not satisfied with the dowry and they were asking the deceased to bring Rs. two lakh more as dowry. The deceased used to disclose this demand of respondents and harassment given to her on that count. It is the case of father of deceased that he had tried to convince the respondents to behave well and he had even promised to give amount in installments in future. Allegations are made that the husband and his relatives, then started taking suspicion over the character of the deceased and they were saying that they would drive her out of matrimonial house one day. The last disclosure was made on 21.2.2017. The incident in question took place on 28.2.2017. The information was received by the father of the deceased at about 2.00 p.m. that Sarika was sick. He rushed to the house of respondents and there he learnt that Sarika was

dead and her dead body was found in a well. He gave report on 1.3.2017.

3. Spot panchanama shows that the well where the dead body was found is situated in the vicinity of residential place of respondents. The water was at the distance of 30 fts. from the ground level and the panchanama does not show that there was any arrangement for getting down in to the well. The P.M. report shows that as many as four anti-mortem injuries were found on the dead body which were as follows :-

- (i) Abrasion over left cheek, 1 x 1/4 c.m. liver red
- (ii) Imprint abrasion over left shoulders and scapular region, 7 x 2 c.m. red
- (iii) Abrasion over left intra scapular area 10 x 1.5 c.m. red and
- (iv) Imprint abrasion over right loin oblique 10 x 2 c.m. red.

The death took place due to asphyxia due to drowning.

4. The aforesaid injuries and particularly, the imprint abrasions show that some incident did take place and the injuries create probability that beating was given to the deceased in which force was used. The death took place within

13 months of the date of marriage. In view of these circumstances and the nature of allegations, the crime is registered for offence punishable under section 304-B of I.P.C. and also for offence punishable under section 498-A of I.P.C. Unless and until somebody from the house of husband is taken in custody, it will not be possible to ascertain as to what had happened on that day and as to how the deceased had sustained aforesaid injuries. The punishment for life is provided for aforesaid offence. All these circumstances are virtually ignored by the learned Judge of the Sessions Court. Unless there is custodial interrogation, atleast of the husband Sandeep, it will not be possible to reveal the truth. This Court has no hesitation to observe that the learned Judge of the Sessions Court has committed serious error in granting relief of anticipatory bail atleast in favour of husband, Sandeep Mahadeo Shelke. After custodial interrogation of Sandeep Shelke, the investigating agency may be in a position to collect some material and at that time, the matter as against respondent Nos. 3 to 5 can be decided. At present, it is not necessary to cancel the anticipatory bail granted in favour of respondent Nos. 3 to 5, but it is necessary to cancel the relief of anticipatory bail granted in favour of respondent No. 2 - Sandeep Shelke. In the result, following order is made.

ORDER

(i) The application at present is allowed only against respondent no. 2 - Sandeep Mahadeo Shelke. The order made by the learned Judge of the Sessions Court granting anticipatory bail in his favour is set aside and the anticipatory granted in his favour is cancelled.

(ii) The application at present is rejected as against respondent Nos. 3 to 5.

(iii) There will be liberty to the State and the complainant to come to this Court again if there is sufficient material as against respondent Nos. 3 to 5 after making investigation of respondent No. 2 - Sandeep Mahadeo Shelke during custodial interrogation.

[T.V. NALAWADE, J.]

ssc/