

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

16 CRIMINAL APPLICATION NO. 3300 OF 2017

BALU NATHA DUKARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Joydeep Chatterji.
APP for Respondent : Mr. A. A. Jagatkar.

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CORAM : **V. K. JADHAV, J.**
DATE : 09th August, 2017.

ORDER :

. This application is filed for getting released on bail in connection with Crime No.I-360 of 2016 registered at Pathardi Police Station, District Ahmednagar for the offences punishable under Sections 302, 323, 498-A, 504 and 506 read with 34 of the Indian Penal Code. Applicants' applications with similar prayer bearing Criminal Miscellaneous Application Nos.1514 and 1515 of 2016 came to be rejected by the Additional Sessions Judge, Ahmednagar by order dated 6th December, 2016. The learned Sessions Judge has rejected the said applications after filing of the charge-sheet.

2 Brief facts giving rise to the present application are as follows:

Deceased Savitra was given in marriage to the son of Applicant

Nos.1 and 3 i.e. co-accused Dnyaneshwar and the marriage was solemnized on 10th July, 2016. Some days after the marriage, deceased Savitra was subjected to cruelty by the husband and the present Applicants. The Applicants and husband co-accused Dnyaneshwar were suspecting about the character of deceased Savitra. On 2nd September, 2016, in the morning, deceased Savitra was found unconscious in the room of her matrimonial home. She was taken to the hospital. She was declared dead on arrival in the hospital on 2nd September, 2016 itself. On the basis of the complaint lodged by the mother of deceased Savitra dated 4th September, 2016, the aforesaid crime came to be registered against the present Applicants and co-accused Dnyaneshwar. The present Applicants came to be arrested on 4th September, 2016. After due investigation, the concerned police station has submitted the charge-sheet against the Applicants and co-accused Dnyaneshwar in the month of October 2016. It has been stated in the charge-sheet that deceased Savitra was subjected to cruelty by suspecting about her character by the Applicants and her husband co-accused Dnyaneshwar and that she was murdered by the Applicants and co-accused Dnyaneshwar by pressing the pillow on her nose and face. Hence, this application for getting released on bail.

3 The learned counsel for Applicants submits that the prosecution case entirely rest upon the circumstantial evidence. The learned counsel submits that the allegations made in the complaint primarily focus on co-accused Dnyaneshwar. It has been specifically alleged in the complaint that co-accused Dnyaneshwar was giving ill-treatment to deceased Savitra by suspecting about her character. It has also been alleged in the complaint that deceased Savitra had also disclosed to her mother and other family members that her husband co-accused Dnyaneshwar was having love affair with one Manisha Navnath Jadhavar and she had witnessed the incident when they were talking with each other in isolation. The learned counsel submits that it has been specifically alleged in the complaint that deceased Savitra disclosed to her mother that because of the said incident witnessed by deceased Savitra, her husband co-accused Dnyaneshwar was excessively harassing her. The learned counsel submits that deceased Savitra found in her own room in unconscious condition in the morning of 2nd September, 2016. The learned counsel submits that as per the postmortem report, the cause of death is Asphyxial due to smothering and on perusal of the external injury as mentioned in column No.17, it appears that deceased Savitra had sustained the injury on her nose, right nasal ala, region of face and 1/3rd of right thigh

and 1/3rd of left thigh. The learned counsel submits that during the course of investigation, co-accused Dnyaneshwar was subjected to medical examination and as per the Medico Legal Certificate, the injury of scratch, abrasion on dorsum of left hand and blunt trauma on right palm and scab full off left side noted by the medical officer, who has examined him. Injury No.1 as mentioned in the said certificate is due to sharp and rough edged probably by nail and other injuries by hard and blunt object and rough edge object. The learned counsel submits that the complaint was belatedly filed against all the family members. The learned counsel submits that without prejudice to the defence of co-accused Dnyaneshwar, the evidence, if any, *prima-facie* point out the finger against him and not against the Applicants. The learned counsel submits that the Applicants are ready to abide by any condition, if imposed by this Court while releasing them on bail.

4 The learned APP submits that there are allegations about the cruelty by suspecting about the character of deceased Savitra, against the Applicants and co-accused Dnyaneshwar. The learned APP submits that the Complainant and the Applicants / Accused are the neighbours. In the early morning of 2nd September, 2016, when deceased Savitra was found in unconscious condition in her room, the Applicants have not bothered to inform about the same to the

Complainant even though Applicant No.3 remained in the company of the Complainant on the previous night till 10:30 to 11:00 pm. The learned APP submits that the Applicants and co-accused Dnyaneshwar were suspecting about the character of deceased Savitra and she was subjected to ill-treatment on that count. Even they were suspecting about the visits of one Ajinath Ambadas Jadhavar. The Applicants used to tell to deceased Savitra that they have been deceived by her family and she should give divorce to co-accused Dnyaneshwar. Even the Applicants used to threaten her that one day they would finish her. The learned APP submits that it also appears from the statement of one Vimal Jadhavar, a neighbour, that the conduct of Applicants was quite suspicious when deceased Savitra was found in her room in unconscious condition. The learned APP submits that possibility of tampering with the prosecution evidence cannot be ruled out since the Applicants are the neighbours.

5 On careful perusal of the complaint dated 4th September, 2016, it appears that the allegations have been made mainly against co-accused Dnyaneshwar. It has been alleged in the complaint that co-accused Dnyaneshwar was suspecting about the character of his wife deceased Savitra and deceased Savitra was also suspecting that co-accused Dnyaneshwar was having love affair with one Manisha

Navnath Jadhavar. Deceased Savitra had also disclosed to the Complainant that she had witnessed one incident wherein her husband co-accused Dnyaneshwar was talking with said Manisha in a lonely place and since then her husband co-accused Dnyaneshwar was giving more ill-treatment to her on that count alone. It further appears from the contents of the complaint that on 2nd September, 2016 deceased Savitra was found in unconscious condition in the room of her matrimonial home and on previous night till 10:30 pm, the Complainant was chitchatting with Applicant No.3 herein. Even in the midnight, Applicant No.3 had been to the house of the Complainant requesting for the milk of she-goat. All these circumstances indicate that everything was normal till the previous night. It appears from the contents of spot Panchanama that there are three rooms in the house and deceased Savitra was found in one room in unconscious condition. On perusal of the Panchanama drawn under the provisions of Section 27 of the Evidence Act that co-accused Dnyaneshwar has pointed out the said room where deceased Savitra was smothered with the help of pillow. On perusal of the postmortem report, most particularly column No.17, it appears that deceased Savitra had sustained the abrasion injuries on her face, right nasal ala, over nose, 1/3rd of right thigh and 1/3rd of left thigh. Further during the course of

investigation, said co-accused Dnyaneshwar was subjected to medical examination and certain external injuries were also found on his person including the scratch abrasion, which is possible by nails and further contusion and abrasion. The learned APP has vehemently submitted that even though there are three rooms, the house is small and it is difficult to accept that the Applicants have not noted any incident in the previous night. On perusal of the entire charge-sheet, it appears that the allegations are made mainly against co-accused Dnyaneshwar and there are general allegations against the present Applicants. So far as their conduct after the incident is concerned, that may *prima-facie* raise suspicion against them. However, in view of the above discussion, I am inclined to grant bail to the Applicants with certain conditions. Hence, the following order:

ORDER

- I. Criminal application is hereby allowed.
- II. Applicant No.1 to 3 (Balu Natha Dukare, Baburao @ Mithu Balu Dukare and Nanda Balu Dukare) respectively, be released on bail in connection with Crime No.I-360 of 2016 registered at Pathardi Police Station, District Ahmednagar, on furnishing personal

bond of Rs.50,000/- (Rupees Fifty Thousand Only)
each with one solvent surety of the like amount on the
following conditions:

- a) The Applicants shall not enter the village
Akola, Taluka Pathardi, District Ahmednagar
for a period of six months from the date of this
order.
- b) The Applicants shall not tamper with the
prosecution evidence in any manner.
- c) The Applicants shall attend the Pathardi Police
Station once in a week on every Sunday in
between 09:00 am to 11:00 am for a period of
three months from the date of this order.

III. Criminal application is accordingly disposed of.

[V. K. JADHAV, J.]