

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

912 CRIMINAL APPLICATION NO. 5557 OF 2017

1. KASHIBA S/O. GOVINDRAO DHALE
2. SAKHRABAI KASHIBA DHALE

... APPLICANTS

VERSUS

THE STATE OF MAHARASHTRA

... RESPONDENTS

.....

Mr. A.B. Shinde, Advocate for applicants.
Mr. A.S. Shinde, A.P.P. for respondent.

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**CORAM : V.L. ACHLIYA, J.
DATED : 23rd NOVEMBER, 2017.**

ORAL ORDER:-

The applicants, apprehending arrest in connection with offence registered u/s 302, 304-B, 498-A r/w 34 of Indian Penal Code vide Crime No.0228/2017 with Police Station Himayatnagar, District Nanded, preferred this application seeking anticipatory bail.

2. Heard the learned counsel for the applicants and learned A.P.P for the State. Perused the F.I.R and case papers of investigation.

3. In short, it is contention of learned counsel for the applicants that, in the FIR itself the informant has stated that, the deceased and her husband were staying together in the

house located in the agricultural field. Whereas, the applicants were residing in their house located in the village i.e. an Walkewadi. It is pointed out that, in the F.I.R it is mentioned that the husband of the deceased i.e. son of the applicant caused the murder of the deceased by throttling her neck. He submits that, if the allegations made in the F.I.R are taken to its face value, then it make out no offence u/s 302 as well as 304-B of Indian Penal Code against the applicants. The allegations made in respect of alleged demand are vague and general in nature and the applicants being the father-in-law and mother-in-law of the deceased, they have been falsely implicated in the case at the instance of father of the deceased. He submits that, in order to save the applicant being arrested and humiliated on the basis of such complaint, they deserve to be protected by exercising powers u/s 438 of Code of Criminal Procedure.

4. On the other hand, learned A.P.P opposed the application with contention that, there are allegations to effect that the applicants as well as the husband of the deceased had demanded Rs.20,000/- from deceased and on that count there was continuous ill-treatment to deceased. He submits that, in the facts and circumstances of the case that, offence u/s 304-B of Indian Penal Code is attracted against the applicants, and as the deceased died within a period of three months of her marriage with the son of the applicant no.2.

5. On due consideration of submissions advanced in the light of allegations made against the applicants in F.I.R. and postmortem report, I am of the view, the case is made out to entertain and allow the application seeking anticipatory bail filed by the applicants. The allegations made in the F.I.R spell out that, since the marriage of deceased with the son of the applicant no.2, they were residing separately in their house located in the agricultural field of the applicants. The applicants were residing in their house in village Walkewadi. They used to come to agricultural field in the day time for the work and in the evening they used to return to their house at Walkewadi. The facts to this effect are mentioned in the F.I.R. In this view, it is difficult to believe that, deceased was subjected to ill-treatment and harassment at the hands of the applicants and that too for amount of Rs. 20,000/-. The allegations made in the F.I.R are too vague and general in nature. In the F.I.R itself it is mentioned that, the husband of the deceased committed her murder by throttling her neck. Postmortem report also indicates that, deceased died due to "strangulation". Only for the reasons that the deceased had died within a three months of marriage no presumption can be drawn that deceased had died Dowry Death. Looking to overall facts of the case, the custodial interrogation of applicants is not necessary. In case, the protection is not granted to applicants, there is every likelihood that, applicants may be arrested and humiliated for not offence committed on their part.

In this view, I am inclined to allow the application with certain conditions:

7. It is clarified that the observations as made above are made for the limited purpose of deciding the present application and same shall not be treated as the observations made as to merit of the case.

8. Hence, the following order is passed:

ORDER

i) The application is allowed. In the event of arrest of applicants in connection with offence registered u/s 302, 304-B, 498-A r/w 34 of Indian Penal Code vide Crime No.0228/2017 with Himayatnagar Police Station, District Nanded, the applicants be released on bail on each of them furnishing bail in the sum of Rs. 25,000/- with one surety in the like amount, on following conditions:

(a) The applicants shall appear before the Investigating Officer on 27.11.2017 at 11.00 a.m. and thereafter as and when directed by the Investigating Officer, till filing of charge-sheet/final report.

(b) The applicants shall appear before the Officer in-charge of concerned Police Station on every Sunday in between 10.00 a.m to 11.00 a.m. to record their presence.

(c) The applicant shall not contact the complainant and indulged into any act amounting to tampering the prosecution evidence.

(b) The applicants shall not enter into local limits of village Walkewadi, till after filling of charge-sheet.

(5)

ii) In the event of breach of any of the conditions of bail, the bail granted to the applicants liable to be cancelled.

(V.L. ACHLIYA, J.)

Sameer/Nov-17