

applicants / original accused nos.1 and 3 along with co-accused i.e. accused no.2 Dadasaheb Kanchan were convicted for offence punishable under Section 304B, 306 and 498A read with Section 34 of the IPC, by the learned Additional Sessions Judge, Pune. For the offence punishable under Section 304B of the IPC, they all came to be sentenced to suffer imprisonment for 10 years apart from payment of fine of Rs.1,000/-. For the offence punishable under Section 306 of the IPC, they are sentenced to suffer simple imprisonment for 3 years. For the offence punishable under Section 498A of the IPC, they all are sentenced to suffer imprisonment for 2 years, apart from payment of fine of Rs.500/-. All substantive sentences are directed to run concurrently by the learned Additional Sessions Judge, Pune.

2 Heard the learned advocate appearing for applicants / original accused nos.1 and 3. By drawing my attention to the order dated 22nd December 2016 passed by this court (Coram : Revati Mohite-Dere, J.) in Criminal Application No.1529 of 2016, the learned advocate appearing for these applicants / original

accused nos.1 and 3 argued that case of applicant therein i.e. accused no.2 Dadasaheb Kanchan was same as that of present applicants/original accused nos.1 and 3. The learned advocate argued that accused no.2 Dadasaheb Kanchan has been released on bail by suspending the sentence imposed upon him, by this court on 22nd December 2016, and therefore, on the principle of parity, both these applicants / original accused nos.1 and 3 are also entitled for bail. Apart from this, the learned advocate, by taking me through the evidence of PW1 Balasaheb Paraghe – father of the deceased, argued that accused persons were well off as seen from cross-examination of this witness. He further argued that evidence of the prosecution is not demonstrating cruelty for and on account of demand of dowry. By placing reliance on material elicited from cross-examination of PW1 Balasaheb, the learned advocate appearing for the applicants / original accused nos.1 and 3 pointed out the letter marked as Article A/14 by the learned trial court. He drew my attention to paragraph 11 of cross-examination of PW1 Balasaheb, wherein the witness has accepted the fact that his daughter i.e. deceased Shubhangi was

having a friend named Tejaswini @ Teju and she used to be with Tejaswini @ Teju. By pressing in service the letter at Article A/14 written by Tejaswini @ Teju to deceased Shubhangi, the learned advocate appearing for the applicants / original accused nos.1 and 3 argued that cause of commission of suicide by Shubhangi cannot be attributed to any act of accused persons.

3 The learned APP opposed the application by contending that evidence of PW3 Prajani Kalbhor demonstrated that the deceased was subjected to cruelty for and on account of demand of dowry and therefore applicants are not entitled for bail. The learned APP has not disputed order dated 22nd December 2016 passed in Criminal Application No.1529 of 2016 by this court releasing co-accused Dadasaheb Kanchan on bail.

4 I have carefully considered the rival submissions and perused the order dated 22nd December 2016 passed by this court (Coram : Revati Mohite-Dere, J.) in Criminal Application No.1529 of 2016. By this order, accused no.2 Dadasaheb Kanchan has been

released on bail. Reasonings given by this court while allowing the said Criminal Application No.1529 of 2016 found in paragraphs 3 to 5 are thus :

“3 Learned Counsel for the applicant submitted that the allegations against the applicant are general in nature and that there is no material/evidence as against the applicant to show his complicity in the offence. He submitted that the applicant was on bail, pending trial and that he has not abused or misused the liberty granted to him.

4 Perused the papers. Admittedly, the applicant was not present on the date of the incident in the house, when the deceased committed suicide. The applicant was on bail pending trial and that he has not abused or misused the liberty granted to him. The Appeal has been admitted by a separate order passed today. The applicant was on bail, pending trial and has not abused or misused the liberty granted to him.

5 Considering the aforesaid, the application is allowed. The applicant's sentence is suspended, and the applicant is enlarged on bail, pending the

hearing and final disposal of his Appeal, on the following terms and conditions :

ORDER

(i) The Applicant be enlarged on bail on furnishing PR. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;

(ii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court and to the concerned Police Station, in writing.

(iii) The Application is allowed in the aforesaid terms and is accordingly disposed of.

(iv)) All concerned to act on the authenticated copy of this order.”

5 Now let us compare case of present applicants / original accused nos.1 and 3 with that of accused no.2 Dadasaheb Kanchan who is released on bail vide this order. Applicant no.1 Santosh Kanchan is son, released co-accused Dadasaheb Kanchan is his father, whereas applicant no.3 Ratna Kanchan is his mother. Applicant no.1 Santosh Kanchan and applicant no.3 Ratna

Kanchan were on bail during pendency of the trial and the learned APP is not disputing the fact that they had not abused or misused the liberty granted to them during the trial. Thus, on this aspect, case of present applicants / original accused nos.1 and 3 is identical with that of co-accused Dadasaheb Kanchan, who has been released on bail by this court. The next reasoning recorded by this court for releasing the co-accused i.e. accused no.2 Dadasaheb Kanchan is to the effect that he was not present on the day of the incident in the house when the deceased committed suicide. The learned APP is not disputing the fact that present applicants / original accused nos.1 and 3 were also not present at the house when the deceased has committed suicide. The learned advocate appearing for applicants /original accused nos.1 and 3 argued that, infact, by breaking open the door of the house, the deceased was taken out from the house. It is, thus, clear that, on this aspect also, the case of present applicants / original accused nos.1 and 3 is identical with that of co-accused i.e. accused no.2 Dadasaheb Kanchan who is already released on bail. Apart from these two reasons, there does not seem to be any other reason

recorded by this court while releasing the co-accused Dadasaheb Kanchan on bail. With these two reasons, as stated above, case of both these applicants / original accused nos.1 and 3 before the court is at par with accused no.2 Dadasaheb Kanchan, who is released on bail by this court vide order dated 22nd December 2016. So, on the principle of parity, present applicants / original accused nos.1 and 3 are also entitled for their release on bail during pendency of the appeal filed by them before this court.

6 Be that as it may, let us consider whether prima facie case for release on bail even on merit is made out by both these applicants / original accused nos.1 and 3 before this court.

7 PW1 Balasaheb is father of the deceased. His evidence is to the effect that on return from honeymoon, he saw his daughter unhappy. His evidence shows that his daughter had narrated the events in her matrimonial life not to this witness but to her aunt and mother. These relatives do not appear to have been examined by the prosecution.

8 Then comes evidence of PW3 which is relied by the learned APP. PW3 Prajani is cousin of the deceased. She narrated what transpired in the matrimonial life of deceased on 23rd April 2007. As per her version, on 23rd April 2007 the deceased and her husband had been to her house. The deceased told her that her in-laws were giving ill-treatment to her and they were asking her to bring money for purchasing a Scorpio vehicle. This witness further deposed that the deceased told her that her in-laws were saying that articles such as washing machine, Television, Refrigerator were not given. What was the ill-treatment and nature of ill-treatment allegedly given by in-laws to the deceased is not disclosed by this witness. Explanation to Section 498A of the IPC defines the terms “Cruelty.” It implies harsh and harmful conduct with certain intensity and persistence. It covers both physical as well as mental agony, torture or tyranny. The term cruelty postulated in Explanation to Section 498A of the IPC implies that the victim thereof must be put to intense miseries and woes, strongly stirring feelings that life is now not worth living and she should die. In this view of the matter, what is required is

nature of ill-treatment given to the married woman and this is required to be established by adducing evidence on that count. Apart from this, the other narration by the deceased to PW3 Prajani is to the effect that once she found a photograph of a woman in the wallet of her husband and when she tore that photograph, her husband had beaten her. The question for determination would be whether such single and isolated act would amount to cruelty as envisaged by explanation to Section 498A of the IPC.

9 Similarly, in order to prove offence punishable under Section 304B of the IPC, the prosecution is enjoined to prove that there was death of a woman caused by burn or bodily injuries or had occurred otherwise than under normal circumstances. Such death is required to be proved to have occurred within seven years of marriage. In addition to this, it is required to be established that the deceased was subjected to cruelty or harassment by her husband or her in-laws. Similarly, it is also required to be established that such cruelty or harassment was for and in

connection with demand for dowry and that too soon before her death. I have also recorded what is the evidence on this aspect coming from mouth of PW3 Prajani.

10 Considering the nature of evidence available against applicants / original accused nos.1 and 3, as well as the fact that with similar evidence against him, co-accused i.e. accused no.2 Dadasaheb Kanchan has already been released on bail by this court vide order dated 22nd December 2016, I am of the considered view that applicants /original accused nos.1 and 3 are also entitled for bail. Principle of parity entitles them for bail and as such the order :

- i) The application is allowed.
- ii) Substantive sentence of imprisonment imposed upon applicants / original accused nos.1 and 3 is suspended and they are directed to be released on bail on their executing P.R.Bond in the sum of Rs.15,000/- each and on furnishing surety in like amount by each of them.

iii) Applicants / original accused nos.1 and 3 shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court and to the concerned Police Station, in writing.

(A. M. BADAR, J.)