

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 407 OF 2017

1 Tharvendra Singh Dhruvsingh Kushwah.
2 Rakhi Tharvendra Kushwah. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Nitin U. Jadhav, advocate for Applicants.

Ms. Veera Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 10, 2017**

P.C.:

1 Heard the learned Counsel for the applicants and learned APP for State. Perused the papers.

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 58 of 2017 registered at Mahatma Phule Police Station, Kalyan for offence punishable under section 498A, 306 of the Indian Penal Code.

3 It is the case of the prosecution that Sonam was married to the brother of the present applicant on 7/5/2015. That she was being harassed and ill-treated in her matrimonial house as they were demanding dowry. That on 28/2/2017 at about 4.30 a.m. Sonam had called upon her sister-in-law Bhavana on her cell phone. She was crying at that time. She had informed her sister-in-law that her husband and her co-sister Rakhi were assaulting her throughout night. Sister-in-law made an attempt to reconcile her. On the next day in the morning, the father of the applicant had informed the parents of Sonam that she was attempting to commit suicide. Soonthereafter, there was another call that Sonam had committed suicide. It is alleged that Sonam was being harassed at the hands of her husband and present applicants, as they were coercing her to fetch Rs. One Lakhs.

4 Upon perusal of the papers of investigation, it is seen that Sonam was carrying pregnancy of 8 weeks at the time of incident. The fact that she was being assaulted by Mansingh and his sister-in-law

throughout night constrained Sonam to commit suicide. The said episode in all probabilities had triggered her emotions. There were no specific overt act attributed to the applicant No. 1 except the fact that he was demanding dowry. In view of this, applicant No. 1 deserves grant of pre-arrest bail.

5 There is specific overt act attributed to the applicant No. 2 alleging therein that she was assaulting deceased Sonam throughout night and soonthereafter, she had committed suicide. This Court is of the opinion that Rakhi alongwith husband of deceased is equally responsible for the suicidal death of Sonam. This Court has rejected the application filed by the husband of the deceased. The allegations against Rakhi and deceased's husband Mansingh are same. Proviso to section 437 of the Code of Criminal Procedure, 1973 cannot be considered under an application under section 438 of the Code of Criminal Procedure, 1973. Hence, the application as far as applicant No. 2 is concerned, deserves to be rejected.

6 However, observations are restricted to the application under section 438 of the Code of Criminal Procedure, 1973 and shall not be considered at the time of hearing application for quashing of FIR or discharge or at the time of trial.

7 Hence, the following order is passed :

ORDER

(i) The application is allowed as far as the applicant No. 1 is concerned.

(ii) In the event of arrest in Crime No. 58/2017 registered at Mahatma Phule police station, the applicant No. 1 be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more local solvent sureties in the like amount.

(iii) The applicant No.1 shall report to the concerned police station on every Sunday between 10.30 a.m. to 12.30 noon and cooperate with

the investigating agency to the best of his capacity till filing of the charge-sheet.

(iv) The application in so far as applicant No. 2 is rejected.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)