

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

ANTICIPATORY BAIL APPLICATION NO.423 OF 2017

1. Ashok Sambhaji Giranje
2. Sumit Ashok Giranje ... Applicants

Vs.

The State of Maharashtra ... Respondent

Mr.A.P. Mundargi, Sr.Advocate i/b Subir Sarkar for the Applicants
Mrs.Rutuja Ambekar, APP, for Respondent – State
Ms.Manisha Devkar with Mr.S.M. Katkar for Complainant

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: MARCH 21, 2017**

P.C. :

1. This application is filed by the applicant/accused for pre-arrest bail under section 438 of Criminal Procedure Code as the applicant/accused is prosecuted for the offences punishable under sections 304B, 498A, 306, 323, 504 and 506 r/w section 34 of the Indian Penal Code in C.R. No.71 of 2017 registered at Akluj Police Station, Solapur Rural. The applicant/accused No.1 is the uncle of the husband of the deceased lady viz., Sonali Amol Giranje and applicant/accused No.2 is the paternal cousin of her husband. They are practising advocates from Solapur.

2. It is the case of the prosecution that the deceased Sonali got married with Amol on 22.4.2014. Initially, she was treated well in her house. However, she suffered stomach ache and the Doctor diagnosed that her one kidney was small. In between the co-accused i.e., the husband and her in-laws used to abuse and assault her on petty grounds for two years. As Sonali did not conceive for two years, she was blamed for the same. The co-accused and the applicant/accused told her to bring Rs.5 lakhs for purchasing a new Bolero car. The deceased Sonali narrated about her torture and harassment to her father. In July, 2016, she was admitted in hospital at Bhigwan. The complainant father went to see her. She informed him that her husband, father in law, the applicants/accused and her mother in law were suspicious about her character and assaulted her with kicks and fist blows and banged her head on the wall and therefore she was admitted in the hospital.

3. It is the case of the prosecution that applicant/accused No.2 has demanded sexual favour from her, which she refused. On 7.10.2016, they forced her to give a false complaint of rape against their relative Balaji Sudam Giranje. The mother of the deceased

had noticed marks of assault on her body on the next day as she was sent to her maiden home. The husband and in-laws of the deceased did not take her back. However, at that time, it was found that Sonali was pregnant. The notices were sent by the applicant/accused on 21.10.2016. The husband filed divorce petition at Barshi on 23.11.2016. Thereafter, the deceased remained quiet and she hanged herself and committed suicide on 12.2.2017. Pursuant thereto, offence was registered against the applicants/accused. Therefore, the applicants/accused filed this application for pre-arrest bail.

4. Mr.Mundargi, the learned Senior Counsel appearing for the applicants/accused, has submitted that the applicants-accused are innocent. There are no allegations against the present applicants/accused about the demand of money of Rs.5 lakhs. So also, there is no evidence to show that the applicants/accused have abetted Sonali to commit suicide. The learned Senior Counsel has pointed out that earlier on 26.10.2106 Sonali had given a complaint with Karmala police which was registered at C.R. No.527 of 2016 under section 498A, 323, 504, 506, 354 r/w 34 of the Indian Penal Code against the applicants/accused and

the co-accused. The learned Senior Counsel pointed out that the allegations made in that FIR and in the present FIR by the father of Sonali, are identical. In the offence of cruelty, beating and sexual assault, the police have already registered the offence and, therefore, again for the same incident, no case cannot be registered for the same allegations. He further submitted that if the sequence of the events is taken into account, then, it can be easily seen that the applicants/accused cannot be said to have abetted in the commission of crime of committing suicide. The learned Senior Counsel submitted that Sonali had left her matrimonial house on 7.10.2016 and she has been staying in her father's house for the last four months, till she committed suicide i.e., on 12.2.2017. There is no incident that the applicants/accused have ever met the deceased and thus, there is no immediate inducement which is the requirement of abetment. The applicants/accused being advocates, have sent notice on 21.10.2016 to the deceased demanding divorce by her husband and thereafter on 23.11.2016, a petition for divorce was filed by the husband. The learned Senior Counsel has submitted that thus, she might have committed suicide as the divorce petition was filed against her and at the relevant time, she was pregnant. He

submitted that the applicants/accused were not residing jointly in the house of the husband of the deceased and thus, there was no occasion to have continuous direct contact with the deceased. The learned Senior Counsel has further submitted that the applicants/accused are innocent and have not committed any offence and therefore, they be granted pre-arrest bail.

5. The learned Prosecutor as also the learned Counsel for the complainant have opposed the application. The learned Prosecutor relied on the postmortem report of Sonali. It shows that she died due to asphyxia as she hanged herself. She submitted that no woman will take such drastic step of ending the life when she is pregnant. She further relied on the complaint of the father and also complaint of the victim, which she had lodged on 26.10.2016. She submitted that the applicants/accused are advocates by profession and therefore, they have deliberately made an entirely false and humiliating story against the deceased while sending notice. The learned Prosecutor further submitted that Sonali has left a suicide note, however, the report of the handwriting expert is awaited.

6. Perused the FIR given by the present complainant/father as also the complaint dated 26.10.2016 lodged by the deceased Sonali herself and the other statements of the mother of the deceased and other witnesses. Also perused the postmortem notes which disclose that it was suicidal death. The incidents of torture and harassment are mentioned in both the complaints and are the same. It is true that against those incidents, a separate case under sections 498A and 354 especially against the applicant/accused No.2 who committed sexual assault and demanded sexual favour are made and therefore, those instances cannot be taken into account under section 498A in the present case. At this stage, *prima facie*, whether the charges under section 306 or 304B are made out or not, is required to be considered.

7. Sonali got married on 22.4.2014. In her statement, she mentioned that there was a demand of Rs.5 lakhs to purchase a Bolero car. It appears from the statement of Sonali and the other witnesses that the applicants/accused were advocates and near relatives of the husband and father in law of Sonali and therefore, they were consulted in all the matters of the family. There is an allegation that as per the advice given by the applicants/accused,

a demand of Rs.5 lakhs to purchase a Bolero car was made.

8. There is evidence to show that there was continuous torture and harassment. The applicant/accused No.2 was having ill-intention towards her and had demanded sexual favours. It is stated that in the statement of Sonali that she was forced to lodge false complaint of rape against the relative of her father in law and the applicants/accused with whom they were not on good terms. Thus, *prima facie*, it shows that Sonali was used as a pawn to settle their score with one Balaji Sudam Giranje. She was definitely carrying a heavy burden of making false accusations of rape against somebody.

9. It is not disputed that Sonali had gone to her maiden home on 7.10.2016 and she stayed there for four months upto 12.2.2017. Thus, nearly for four months, she was staying away from her matrimonial home. In any other case, the period of four months could have been considered as a sufficient time to disconnect the accused from the allegations of immediate inducement or abetment to commit suicide. However, in the cases of cruelty, abuse and matrimonial discord, it may not be so. Moreover, she had received the notice dated 21.10.2016 from the

applicants/accused. It is a fact that the applicants/accused were advocates and sending notice would not have been otherwise considered as an overt act of inducement. However, the applicants/accused while sending the notice, *prima facie*, have acted in dual capacity. In the notice, direct allegations on her character that she was having illicit relationship with Balaji Sudam Giranje against whom she was asked to lodge false complaint were made. The allegations of extorting money from Balaji for withdrawing case were made. The postmortem notes disclose that a dead fetus of 20 to 22 weeks was found in the body of Sonali. All these aspects have a cumulative impact which drove her to commit suicide. Thus, the time of four months was not a cooling period but was a period of sinking during which she completely felt humiliated and lost self-respect and committed suicide.

10. Thus, *prima facie*, I am of the view that there is evidence against the applicants/accused and hence, the Bail Application is rejected.

(MRIDULA BHATKAR, J.)