

nsc.

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

CRIMINAL BAIL APPLICATION NO.1000 OF 2017

- | | | |
|----|--------------------------|---------------|
| 1. | Mirabai Gangadhar Kadam | |
| 2. | Gangadhar Jibhau Kadam | ...Applicants |
| | Versus | |
| | The State of Maharashtra | ...Respondent |

Mr.S.R.Ganabavale, i/b Mr.Sunil Ghatge, for the Applicants

Ms.Rutuja Ambekar, A.P.P. for the Respondent-State.

ASI – S.D.Fangal, Malegaon Taluka Police Station, Nashik.

CORAM : REVATI MOHITE DERE, J.

DATE : 6th JUNE, 2017

P.C. :

1. Heard learned counsel for the parties.

2. By this application, the Applicants seeks their enlargement on bail in connection with C.R.No.278 of 2016 registered with the Malegaon Taluka Police Station, Nashik for the alleged offences punishable under Sections 302, 498A r/w 34 of the Indian Penal Code.

3. The applicant no.1 - Mirabai Gangadhar Kadam, is the mother-in-law of the deceased – Shital and applicant no.2 - Gangadhar Jibhau Kadam is the father-in-law. According to the prosecution, deceased – Shital got married to Prashant Kadam, son of the applicants on 16th May, 2013. It is alleged that initially for 2 to 3 months, Shital was treated well, however, thereafter, there was demand for dowry. According to Sharad Deore, father of the deceased – Shital, the accused were demanding dowry for purchasing tractor and were also not sending his daughter to her maternal home with her son. It is alleged that on 10th December, 2016, Shital was admitted to Sankalp Hospital at Malegaon, where she died during the course of treatment. The FIR was lodged by Sharad Deore, father of the deceased on 11th December, 2016 alleging the aforesaid offences.

4. Learned Counsel for the applicants submits that the allegations as against the applicants are false, inasmuch as, the co-accused – Prashant Kadam had obtained a loan for purchasing a tractor and was regularly paying the same. He relied on Exhibit - “C”, which is on page 11 of the application in support of his submission. He further submitted that the

allegations are essentially as against the husband - Prashant Kadam. He further submitted that the cause of death is 'death due to poisoning' and not due to throttling. He further submitted that the deceased's son, aged about 3 years is presently with the applicant no.1, in jail.

5. Learned APP opposed the application. She submitted that the statement of Nagu S.Suranje shows that the applicants were also present in the house alongwith co-accused - Prashant Kadam. She further submitted that the postmortem report shows that the deceased had sustained as many as 7 injuries on her person including a ligature mark on the right side of her neck. She submitted that the statements of the witnesses show that the applicants alongwith co-accused - Prashant Kadam were harassing and ill-treating the deceased – Shital.

6. Perused the papers. The prosecution case rests entirely on circumstantial evidence. The final postmortem report shows that the deceased died due to 'cardiorespiratory failure due to ingestion of poisonous substance'. Column – 17 of the postmortem report shows that there were scratch marks on her left elbow, right knee, left calf and cheek. Injury no.7

shows that there are ligature marks on the neck, but it is stated that there is no fracture or dislocation. The prosecution case rests entirely on circumstantial evidence. No doubt, there are *prima facie* allegations of Section 498A, qua the applicants, but, merely because the applicants were present in the house does not mean that they are responsible for the offence punishable under Section 302. It is a matter which will be decided by the trial Court, on the basis of the material adduced by the prosecution. The applicant no.1 is a lady and the applicant no.2 is a senior citizen. They have been in custody since December, 2016.

7. Considering the aforesaid, the application is allowed and the applicants are enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- ii) The Applicant No.2 shall attend the concerned Police Station, on the first Monday of every month, between 10:00 a.m. to 11:00 a.m., till the

conclusion of the trial;

iii) The Applicants 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 as well as to the concerned Police Station, in writing;

iv) The Applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

v) The Applicants shall co-operate in the conduct of the trial.

8. The Application is allowed and disposed of in above terms.

9. The co-accused - Prashant Kadam shall not claim parity with the applicants.

10. It is also made clear that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

11. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)