

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

CRIMINAL BAIL APPLICATION NO. 1119 OF 2017

Bhushan Supdu Borse

... Applicant

vs.

The State of Maharashtra

... Respondent

.....

Mr. Rameshwar N. Gite for the Applicant.

Ms. S. S. Kaushik, APP for the State.

CORAM : T. V. NALAWADE, J.

DATE : 29.08.2017.

P.C.:

1. The application is filed for bail in C.R.No. I-17/2016 registered at Jaykheda Police Station, Tal. Satana, Dist. Nashik for offences punishable under Section 302, 498-A, 201 etc. read with Section 34 of the Indian Penal Code. Charge-sheet is already filed in this crime and so the papers of investigation were available for perusal. Both the sides are heard.

2. The crime is registered on the basis of report given by Rakesh, brother of deceased Ujjwala. Ujjwala was given in marriage to the present applicant in the year 2013. There is allegation against the applicant and his relatives that they were asking her to handover the gold ornaments weighing 5 tolas as they wanted to mortgage/sell the said ornaments. The deceased was not ready to handover the gold ornaments and due to that they were harassing the deceased.

3. The incident in question took place on 12.02.2016 at about 3:00 a.m. The deceased called the first informant on her mobile by using her mobile and she complained that her husband and his relatives were harassing her. She also requested him to come to her matrimonial house and take her to her parents house. The first informant then contacted the present applicant-husband and made inquiry. It is

contended that the applicant said that there was a petty quarrel and there was nothing to worry about. Due to that, the first informant did not take it seriously. On that day in the evening, he received news that Ujjwala was missing. He went to the matrimonial house of Ujjwala with some persons and then, search for Ujjwala was started. The dead body of Ujjwala was found in a well along with the dead body of her kid, aged about 9 months. The dead bodies were referred to the Government Hospital, for post mortem examination. On 13.02.2016, itself report came to be given and the crime came to be registered.

4. This Court has carefully gone through the PM reports in respect of the two dead bodies. The PM report show that as many as seven surface wounds were found on the dead body of Ujjwala and they were anti-mortem in the nature. The surface wound found on head had caused the scalp haematoma and extensive intra carnial Haematoma. There was no froth or water in lung. Thus, there was no sign of death due to drowning. The doctor has given an opinion that the death took place due to cardiorespetary arest due to head injury. Similar findings are there in the second PM report in respect of the kid. In this case, there were three surface wounds and there was a fracture of scalp. The kid also died due to head injury. The spot panchanama shows that the well is constructed one and it was not possible to simply get into the well to fetch water. These circumstances are sufficient to prove that both of them were murdered and then their dead bodies were thrown into the well. One thing is certain that they did not die due to drowning.

5. The learned counsel for the applicant submitted that similar allegations are there against the relatives of the applicant and they are released on bail. It is submitted that there are no other circumstances like last seen together and so the applicant is entitled to get bail. This submission is not at all acceptable. Something can be made out from the content of FIR itslef. There was a call from the deceased to the first

informant and immediately the informant had made a call to the present applicant. In ordinary course, the other material to show that the deceased was in the company of the present applicant as the call was immediately taken by the present applicant when the first informant contacted him could have been collected. The investigation continues even if the charge-sheet is filed and such record can be collected. There is a possibility that they were together in the field and such record can still be collected. At present there is a circumstance that the first informant had contacted the deceased and also with the present applicant immediately, one after another and that circumstance is sufficient for the present purpose to reject bail. A heinous crime is committed and the murder of daughter aged about 9 month is also committed. Being the husband, it was the responsibility of the present applicant to inform to police if Ujjwala was really missing, but that step was not taken and this circumstance also can be used against the present applicant. When the case is put on trial, the provisions of sections 106 and 114 of Evidence Act can be used in the case like the present one. There is a clear possibility of tampering with the witnesses at the hands of the present applicant and due to the aforesaid circumstances this Court holds that it is not a fit case to use the discretion. The above observations are for the present purpose only. So, the application stands rejected.

(T. V. NALAWADE, J.)