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

BAIL APPLICATION NO. 1153 OF 2017

Sou Archana Dipak Kondalkar

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Nitesh Mohite i/b J.D. Mane for Applicant.

Mr. S.S. Hulke, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.

DATE : 13th NOVEMBER 2017

P.C.:

1] This is an application under Section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested 02/03/2016 in Crime No.89 of 2016 registered with Karmala Police Station for offence punishable under Sections 302, 201, 11 r/w 34 of the Indian Penal Code.

2] The first information report is lodged by the Police Officer attached to Karmala Police Station on 02/03/2016 on a disclosure statement made by the applicant, that she abandoned her newly born baby girl at Ashti, Talulka Mohol. It is the prosecution case that, the applicant

was married to Dipak Kondalkar 7 years ago. That the couple was blessed with two daughters. On 11.2.2016, the applicant gave birth to another baby-girl. That the husband of the applicant namely Dipak was harassing the applicant on the ground that, she has given birth to 3rd baby-girl and he did not wish to have daughter on third occasion. That after the birth of third baby-girl, the husband of the applicant abused and assaulted her. On 1.3.2016 the mother-in-law of the applicant namely Smt Vaijanta Deokar approached the police station informing that the applicant left the house with her new born child on 27.2.2016. It was learnt that she was at Ashti, Taluka-Mohol. The dead body of a new born child was found in a well. During the course of investigation, the applicant came to be arrested on 2.3.2016. After completion of investigation, police have submitted chargesheet.

3] The record indicates that after the birth of third baby girl, the husband of the applicant continuously harassed and assaulted her on the said ground and being fed-up by the said ill-treatment meted out to the applicant, she had left the house with the child and threw the said child in a well. The record further indicates that, the husband of the applicant namely Dipak is now released on bail by this Court by an Order dated 18th

October 2016. While releasing the husband of the applicant on bail, this Court in para-5 of the said has observed as under:

“5) It is pertinent to note that wife of the applicant was being harassed by him on the ground that she had delivered third baby girl. The conduct itself is heinous, however, it would amount to an offence punishable under section 498 (A) of the Indian Penal Code. It appears that the helpless wife of the present applicant was in post-partum stage and without taking into consideration her mental state, applicant had harassed her to such an extent that she had abandoned the baby girl. It cannot be said that applicant had instigated or abetted his wife to abandon or eliminate the baby girl. She had left the house on her own accord and it was her decision, in a hope that she could save herself from the harassment of her husband.”

I am in respectful agreement with the said observations made by the Co-Ordinate Bench with respect to the present applicant. In the peculiar facts and circumstances of the present case, and considering the fact that the applicant is in jail since her arrest on 2.3.2016 i.e. more than 17 months and the applicant being a woman, this Court is of the view that the applicant deserves to be released on bail.

4] In view thereof, the applicant is released on bail on the following conditions:

Hence the following Order:

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (iii) Applicant shall report to Karmala Police Station on first Sunday of each month, till framing of the charge.
- (iv) Application stands disposed of.

5] It is however made clear that, the observations made hereinabove are in the context of deciding the present application under Section 439 of Cr. P.C., and shall not be taken into consideration at the time of trial.

6] All the concerned to act on an authenticated copy of this Order.

(A.S.GADKARI, J.)