

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1157 OF 2016

Shri Sanjay Nandan Yadav	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr.Samarth S. Karmarkar,Advocate for the applicant.

Mr.Arfan Sait,APP, for the State.

Mr. Gajanan R. Sargav, API, Aarey Police Station present.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 17th March, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C.
The applicant herein is arrested on 10.12.2015 in Crime No.133 of 2015 registered at Aarey Colony Police Station for the offence punishable under Section 304-B of the Indian Penal Code.

2. It is the case of the prosecution that on 31.8.2015, the wife of the applicant was admitted in KEM Hospital with history of burn injuries. Since it is a medico-legal case, statement of the injured was recorded. She had disclosed that she had sustained the accidental burns, as the stove had burst, when she was cooking on the stove. The applicant had also sustained superficial burn injuries and was admitted in the hospital. On 1.9.2015, the applicant had called upon the brother of Rinku Devi on his cellphone and

had informed that Rinku Devi had fallen from the motor-cycle and that she has sustained certain injuries and she is admitted in the hospital and there is no cause for worry. On 4.9.2015, the brother of Rinku Devi had received a phone from Aarey Police Station informing Mr. Virendra yadav, resident of Chapra, District Saran, Uttar Pradesh that Rinku Devi had succumbed to burn injuries and A.D. No.59 of 2015 is registered under Section 174 of Cr.P.C. Mr. Virender Yadav rushed to Mumbai. They approached the Aarey Police Station and were informed by the police that Rinku Devi had sustained burn injuries while cooking food at home. Thereafter, Virender Yadav was sure that he had been misled by the applicant and lodged an FIR. It is stated in the FIR that the applicant had got married to Rinku Devi on 15.5.2014. That his parents had gifted Rinku Devi with ornaments worth Rs.80,000/-. At the time of marriage, it was agreed that a dowry of Rs.5 lakhs would be paid. However, the same demand could not be fulfilled due to economic stringency. Rinku Devi was staying at Nihal Tola till December, 2014. The applicant had brought Rinku Devi to Mumbai for one month. She was being harassed and ill-treated on the ground that the dowry was not paid and that they had not gifted the golden chain at the time of marriage. That, Rinku Devi was assaulted by the applicant under the influence of alcohol. Rinku Devi had informed her brother about the same

from time to time. In January, 2015, the applicant had sent Rinku Devi to Village Nihal Tola. When she was residing at her matrimonial home, she was abused and assaulted by her mother-in-law, sister-in-law. She had also informed her parents that her husband used to assault her and to make her starve. She, therefore, insisted upon her parents to pay dowry. Since she was being continuously ill-treated in her matrimonial home, an FIR was lodged at the Saran Police Station on 19.6.2015 against her in-laws. In August, 2015, the applicant had asked Rinku Devi to come to Mumbai by train. On 1.9.2015, the applicant had misled the complainant that they had met with an accident.

3. The scene of offence panchnama was conducted on 1.9.2015 and at that time in the scene of offence panchnama, it was noted that the kitchen platform was broken and stove was thrown on the ground. There was water in the said room and in the complaint, he had admitted to have extinguished the flames by pouring water. The scene of offence panchnama was conducted prior to the demise of Rinku Devi. She succumbed to the burn injuries on 4.9.2017.

4. The learned counsel for the applicant vehemently submits that in fact as is apparent from the statements of the neighbours that the relations between the couple were cordial and it cannot be presumed that

she has died in suspicious circumstances and therefore presumption under Section 113B of the Indian Evidence Act cannot be drawn at this stage because there is material to indicate that she had died due to accidental death.

5. The learned APP has also vehemently submitted that on 19.6.2015, a first information report was lodged at Saran Police Station against the applicant and his family members. Perused the FIR lodged at Village Saran. It was specifically stated in the said FIR that the applicant and his family members had threatened the victim that they would eliminate her in the eventuality that the dowry is not paid. That she was brutally assaulted. It is in these circumstances that it would be incumbent upon this Court to draw the presumption under Section 113B of the Indian Evidence Act as death has occurred within 7 years in suspicious circumstances. Moreover, the applicant had misled the family members of deceased that she has met with an accident. In the eventuality that they had reached prior to 4.9.2015, Rinku Devi would be in a position to disclose the circumstances in which she had sustained burn injuries. The learned APP has rightly submitted that the applicant and his brother and neighbours were present when she was admitted in the hospital. The medical case papers are not on record and therefore, it is not possible to ascertain as to

whether she was in a position to give the said statement to the doctor. It is not known as to why the statement of the victim was not recorded by the Executive magistrate although she was alive for four days. In view of these circumstances, it is apparent that Rinku Devi has died in suspicious circumstances. It would not be appropriate to analyze the material on record and rely upon the dying declaration which was, in all probability, given under the influence of the applicant and his brother. Hence, the applicant does not deserve to be enlarged on bail.

6. The learned APP submits that the matter is posted for framing of charge before the Sessions Court. The learned Sessions Court shall not be influenced by the observations made hereinabove and shall proceed with the trial on its own merits. The learned Sessions Judge shall also make an endeavour to conclude the recording of evidence in Sessions Case No.152 of 2016, as far as possible, within ten months from the date of framing of charge.

Application stands rejected.

7. Office to communicate this order to the concerned Court forthwith.

(SMT. SADHANA S.JADHAV, J.)