

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

**CRIMINAL APPLICATION NO.1118 OF 2017
IN
CRIMINAL APPEAL NO.660 OF 2017**

Bhupendra Ramji Kharavi ...Applicant
Versus
State of Maharashtra ...Respondent

**WITH
CRIMINAL APPLICATION NO.1117 OF 2017
IN
CRIMINAL APPEAL NO.659 OF 2017**

Kantaben Ramji Kharavi ...Applicant
Versus
State of Maharashtra ...Respondent

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Mr. Ajay Tripathi for the Applicants.
Mr. Prashat Jadhav, APP for the Respondent -State.

CORAM :SMT. ANUJA PRABHUDESSAI, J.

DATED: 11th AUGUST, 2017.

P.C.:-

The Applicant-Bhupendra is original accused No.1 and the Applicant- Kantaben is the original accused No.4, hereinafter referred to as “accused No.1” and “accused No.4” respectively in Sessions Case No.745 of 2013. The accused No.1 has been convicted by the learned Judge, City Civil and Sessions Court, Mumbai for the offences punishable under Sections 498 A, 306 and 406 r/w 34 of the IPC

whereas the accused No.4 Kantaben is convicted for offence under Section 498 A r/w. 34 of the IPC. They have been sentenced as under :-

The accused No.1 is sentenced to undergo :-

- (i) rigorous imprisonment for three years and to pay fine of Rs.5,000/- i/d. to undergo rigorous imprisonment for further six months for the offence punishable under section 498 A of the IPC;
- (ii) rigorous imprisonment for seven years and to pay fine of Rs.10,000/- i/d. to undergo rigorous imprisonment for further one year for the offence punishable under section 306 of the IPC; and
- (iii) rigorous imprisonment for one year for the offence punishable under section 406 of the IPC.

The Accused No.4 is sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.5,000/- i/d. to undergo rigorous imprisonment for further six months in respect of offence under Section 498 A of the IPC.

2. Mr. Ajay Tripathi, the learned counsel submits that the

accused No.1- Bhupendra Kharavi is in custody since 19.7.2017 whereas substantive sentence against accused No.4-Kantaben Kharavi has been suspended pending filing of the appeal. He has submitted that both the accused are not involved in commission of the said offences. He has further submitted that there is no material to indicate that the accused had demanded dowry or that they had subjected the deceased to cruelty. He therefore, prays that the accused No.1 be released on bail and execution of substantive sentences of accused No.1 and accused No.4 be suspended pending the appeal.

3. The learned APP while objecting the said application submitted that deceased Anuradha, wife of the accused No.1 had committed suicide within two months from the date of her marriage. The learned APP submits that the evidence on record prima facie reveals that the deceased Anuradha was subjected to cruelty. He has submitted that in the above facts and circumstances the accused are not entitled for bail and/or suspension of execution of substantive sentence.

4. I have perused the records and considered the submissions advanced by Mr. Ajay Tripathi, the learned counsel for the accused

Nos.1 and 4 and Mr. Prashant Jadhav, the learned APP for the Respondent -State.

5. The records reveal that the accused No.1 Bhupendra and Anuradha (deceased) were married on 17.2.2012. After the marriage, Anuradha was residing in the matrimonial home alongwith accused No.1 and his family members. She returned to her parental house on 24.2.2012 in order to answer her 12th standard examination. She returned to her matrimonial house on 3.4.2012 at Mumbai and she expired on 14.5.2012. The evidence of PW5-Dr. Ravindra Deokar, vis-a-vis the post mortem report at Exhibit 33 reveals that the death was due to asphyxia as a result of hanging. The material on record thus proves that Anuradha had died an unnatural death within three months from the date of her marriage.

6. The evidence of PW1-brother of deceased as well as the evidence of PW3-mother of the deceased prima facie reveals that everything was fine between the husband and wife till about 3.4.2012. Their evidence indicates that on 6.5.2012 and 7.5.2012 they had tried to contact Anuradha on her mobile phone, but her phone was switched off. On 8.5.2012 they called the accused No.1-Bhupendra and asked

him as to why phone of Anuradha was switched off. The accused No.1 told them that he had broken the mobile of Anuradha.

7. The evidence of these two witnesses further reveals that Anuradha had called her mother-PW3 on 9.5.2012 and informed that she was being tortured since she had not brought sufficient dowry. The deceased had told her mother that she was being continuously assaulted for not bringing dowry in the form of car, money and jewelery.

8. The evidence of these two witnesses prima facie reveals that on 13.5.2012 i.e. on a day prior to her death, Anuradha called her mother. She was crying and she had repeatedly told her that she was being harassed and ill-treated for not bringing jewelery, money and other items. Anuradha had told her mother that she was not given food and was being continuously assaulted. Anuradha further told her mother that her in-laws had told her that since she was unable to get the ornaments, she should commit suicide.

9. On 14.5.2012 PW3-Banuben, mother of Anuradha called accused No.1 at about 11.30 to 11.45 a.m. and enquired about

Anuradha. But the accused No.1 told her that he was out for some work. She again called back and talked to Anuradha, but Anuradha sounded very low and appeared to be under pressure. Anuradha was crying on the phone and she once again told her mother that she was being ill-treated and assaulted for not bringing the dowry. On the same evening they received a phone call from the accused No.1. The accused No.1 told PW3-mother of Anuradha that “Anuradha Upar Chali Gayi” and he disconnected the phone. Thereafter the family members of Anuradha tried to make several calls to accused No.1 but he did not receive the calls. Later in the evening Savita- accused No.3 called and told them to come immediately or else they would cremate the body. Family members of Anuradha thereafter contacted the police and proceeded to the matrimonial home of Anuradha at Mumbai. Subsequently, PW1-brother of the deceased lodged FIR against the accused No.1 and his family members for demanding dowry and subjecting her sister to cruelty and also for abetting suicide.

10. The aforesaid evidence prima facie reveals that the deceased had joined her husband in the matrimonial home immediately after her marriage on 17.2.2012. She had returned to her parental home on 24.2.2012 to answer her XIIth standard exams. She

returned to her matrimonial home on 3.4.2012. This young girl had committed suicide within two months from the date of return to the matrimonial home.

11. The evidence of PW1 and PW3 prima facie reveals that the deceased was constantly complaining that she was being continuously harassed and ill-treated for not bringing the dowry. The evidence on record further reveals that even on a day prior to the incident, the deceased Anuradha had complained that she was being subjected to cruelty and was being coerced to commit suicide. Thus, there is prima facie material to show the involvement of the accused No.1 in committing the crime under Section 498 A and 306 of the IPC. Considering the nature of the offence and the evidence in support thereof, in my considered view this is not a fit case for granting bail to the accused No.1. Hence, the application for bail is rejected.

12. As regards, the accused No.4, she is convicted only for offence punishable under section 498 A and sentenced to undergo imprisonment for a maximum period of three years. She has already deposited the fine amount. The Appeal is of the year 2017. Considering the large pendency of the cases, the Appeal is not likely to

come up for final hearing in the next couple of years. Hence, rejection of prayer to suspend the execution of substantive sentences will result the accused No.4 undergoing the imprisonment even before her Appeal is decided on merits. Considering the above facts and also considering the fact that accused No.4 is a woman, in my considered view, pending the appeal and disposal, the accused No.4 to be released on bail. Under the circumstances and in view of discussion (supra), I pass following order:-

ORDER

(i) The Application No.1118 of 2017 for bail is dismissed.

(ii) The Application No.1117 of 2017 is allowed.

(iii) The execution of substantive sentence in Sessions Case No. 745 of 2013 against the accused No.4- Kantaben Kharavi is suspended pending hearing and final disposal of the appeal on furnishing bail bond of Rs.15,000/- (Rupees Fifteen Thousand) with one surety to the like amount to the satisfaction of Judge, City Civil and Sessions Court, Mumbai.

(iv) The accused No.4 shall furnish her contact number and permanent as well as local address, if any, and

shall intimate change of address, if any, to the Investigating Officer, as well as to the concerned Court.

- (v) Hearing of the Appeal is expedited.

(ANUJA PRABHUDESSAI, J.)