

Crime No. 220 of 2016 registered at Malwani Police Station on 24/4/2016. The investigation is completed and charge-sheet is filed on 9/8/2016 against the applicant for offence punishable under section 302, 506(ii) read with section 34 of the Indian Penal Court.

3 It is the case of the prosecution that 21/4/2016, a woman namely Urmila was found unconscious. The neighbours in the said slum area had heard hue and cry. They had been to the spot and then called to the police by dialing 100 number. The police reached the spot. Woman was taken to the hospital where she was declared dead. A.D. No. 58 of 2016 was registered. The inquest panchanama and the post mortem were conducted in A.D. Enquiry.

4 On 22/4/2016 statement of the mother of the deceased was recorded in A.D. Enquiry. She has stated that her daughter Urmila was staying with her. She was deaf and dumb. Urmila has a son who is aged about 8 years old. On 21/4/2016 in the middle of the night at

about 1.30 a.m. mother of the deceased woke up and gave a call to her daughter. The daughter did not respond. She tried to shake her daughter and realised that she was unconscious. She raised hue and cry. Neighbour rushed to the spot and informed the police. The post mortem notes would indicate the opinion as to the cause of death is - “opinion reserved pending for chemical analysis of visera and blood”.

5 On 24/4/2016 mother of the deceased lodged a report at the police station alleging therein that the applicant herein owes Rs. 45,000/- to her. He had even insisted to marry her daughter Urmila. On 20/4/2016 in the intervening night of 21st and 22nd April, 2016 at about 12.30 to 1 a.m. she heard a knock on the door and Urmila opened the door. The applicant and co-accused entered the house. Urmila had gone to sleep and soon thereafter, the applicant and co-accused had taken a load of clothes, tied in a bag, and smothered Urmila. Urmila being deaf and dumb, could not resist. The accused had threatened the complainant of dire consequences in the

eventuality that she raised hue and cry and therefore, she maintained silence for two days. Thereafter, she had gone to Gorai. There her son and elder daughter had given her courage and therefore, she lodged the report.

6 The learned Counsel for the applicant submits that the statement of the complainant would not inspire confidence. The investigating officer has recorded statement of the son of the deceased on 24/4/2016 and he has categorically stated that at the time of the incident, he was sleeping in the house. That the applicant had quarrelled with his grand-mother and his mother. He admits to have heard hue and cry of his grand-mother and therefore, he woke up. According to him, Mahendra had smothered his mother.

7 It is pertinent to note that the statement of the minor is recorded in the presence of his maternal aunt Anita. It is pertinent to note that the mother of the deceased and her son, who is about 8

years old had maintained silence for practically four days. The learned APP submits that the applicant had threatened the mother of the deceased and therefore, she could not disclose the incident to anybody unless she has moral support from her elder daughter and son.

8 Be that as it may, it is pertinent to note that till today, there is no final opinion as regards cause of death of injured or deceased. Perused the post mortem notes. There are no external injuries on the person of the deceased. However, column-20 shows that the lungs were congested and edematous. That there were multiple haemaerrhages seen. It is surprising that the doctor could not form an opinion for last more than 10 months. The statement given by the first informant in A.D. Enquiry needs to be taken into consideration. The learned Counsel submits that the statement of the first informant is not corroborated by medical evidence as there is no final opinion in

respect of cause of death. Hence, the applicant deserves to be enlarged on bail.

9 The observations are prima facie in nature and restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be considered at the time of hearing of application for discharge or quashing of FIR or at the time trial.

10 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall report to Malwani police station on every alternative date commencing from 20/2/2017 between 10.30 a.m. to 1 p.m. till framing of charge. Upon failure to attend any two

consecutive dates, the prosecution is at liberty to move an application under section 439(2) of the Code of Criminal Procedure, 1973.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)