

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2448 OF 2016**

Shri Nilesh Abhiman Birari & Ors.	... Applicant
Vs.	
The State of Maharashtra	.. Respondent

Mr. Tejesh Dande i/b Tejesh Dande & Asso. for the Applicant
Mr. S.H. Yadav, APP, for Respondent – State

CORAM: Mrs. MRIDULA BHATKAR, J.

DATED: JANUARY 13, 2017

P.C. :

1. The application is moved for bail as the applicants/accused are facing charges under sections 302, 304 and 498A, 323, 504, 506 r/w 34 of the Indian Penal Code. It is the case of the prosecution that on 26.4.2016, the accused Nilesh got married with one Ashwini Birari on 26.4.2016 at Kandhane, District Nashik. She has started residing with the co-accused Nilesh. However, within 10 to 15 days, her in-laws and husband demanded Rs.5 lakhs from her to buy a Bolero car and they started abusing, beating Ashwini. When she visited her maiden home in the month of June, 2016, she informed about her torture, harassment at the hands of her husband and in-laws to her father, mother and brother. She also told that there is continuous demand of Rs.5 lakhs and however,

her father told that he did not have that much money to pay and sent her back in the first week of July alongwith her father in law. On 7.7.2016, her father received message that Ashwini has died due to drowning in the well. Her father alongwith her brother and the relatives when reached at Kandhane near the well of the applicant/accused Abhiman ii.e., the father in law, they found the dead body of Ashwini. She was kept on one cot and on examination, they found that there were marks of injuries on her legs, neck, thighs. Her husband and the in-laws were not present near her body. Thereafter, her father and brother took her body to Satara rural hospital, however, at the instance of the father, the body was taken to Nasik for postmortem. Thereafter, on 8.7.2016, at the instance of ASI Ganesh Chandrakant Gurav, the crime was registered at C.R. No.153 of 2016 at Satana police station for the offence of murder and dowry death against all the applicants/accused. They were taken into custody immediately on the next day and hence, this Bail Application.

2. The learned Counsel for the applicant/accused has submitted that he is not pressing the application of applicant/accused No.1 Nilesh Abhiman Birari but he he praying

for bail for the applicants/accused Nos.2 and 3, who are father in law and mother in law and also for applicant/accused No.4 Babalu Abhiman Birari, the brother in law. The learned Counsel for the applicant/accused has submitted that there are no specific allegations against these applicants/accused of harassment and cruelty. He relied on the statement of Dharmendra Dadaji Suryavanshi dated 1.9.2016 and submitted that on 6.7.2016, the father of Dharmendra, who was maternal uncle of Abhiman, died on 6.7.2016 and for the purpose of funeral and final rites, the applicants/accused Abhiman Birari, the father in law, alongwith the applicant/accused Surekha Abhiman Birari, the mother in law, went to Satara. Abhiman stayed in the house of Suryawanshi on 6.7.2016 and Surekha left for Kandhane and on the next day, at 7am, Abhiman received phone call from Kandhane and therefore, he left for Kandhane. The learned Counsel submitted that as Abhiman, as per this statement, was not present when the incident has taken place, he be released on bail. He further submitted that Surekha is a woman and no substantial charges are framed against Surekha and Abhiman. He further submitted that Babalu is 20 year old boy, who is the brother in law of the deceased. He has not committed any offence.

3. Learned Prosecutor has opposed the application. He relied on the statement of the complainant, the father in law, the brother in law of the deceased. He also relied on the postmortem report. He submitted that Ashwini was killed within 75 days from the date of her marriage. Chargesheet is filed.

4. Perused the complaint and the statements of the witnesses; the postmortem report wherein the cause of death is mentioned as asphyxia due to combine effect of manual strangulation and drowning, which is sufficient to cause death in ordinary course of nature. All injuries are antemortem in nature, fresh in duration. This shows ex-facie, that the girl was killed and thrown in the well. From the statements of the father and brother of Ashwini, it is revealed that Ashwini had informed her parents and brother that her husband and in-laws have demanded cash of Rs.5 lakhs to purchase Bolero car. She has also heard about her harassment and torture at the hands of her in-laws and husband. Considering these facts and the evidence before the Court, I am not inclined to grant bail to the applicants/accused, however, although the allegations made against the applicants/accused Nos.2 to 4 are the same, considering the fact that the applicant/accused No.4

Babalu is 20 years old and is a student taking education in the second year B.Com at Satana college, I grant him bail on the following terms:

- i) Bail application qua the applicants/accused Nos.2 and 3 is rejected.
- ii) The applicant/accused No.4 Babalu Abhiman Birari is granted bail and he shall be released upon furnishing a P.R. Bond in the sum of Rs.40,000/- with one or two solvent sureties in the like amount;
- iii) He shall not pressurise the witnesses and not tamper with the evidence.
- iv) He shall attend all the Court dates.

1. Bail Application is disposed of accordingly.

(MRIDULA BHATKAR, J.)