

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

CRIMINAL BAIL APPLICATION NO.3120 OF 2018

1) Dinesh Tulsaram Kumavat;
2) Tulsaram Jethaji Kumavat .. Applicants

Vs.

State of Maharashtra .. Respondent

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Mr.M.S. Mohite a/w. Mr.Viresh Purwant i/b. Mr. Sachin Deokar,
Advocate for the Applicants.

Mr.S.R. Agarkar, APP for the Respondent - State.

Mr.Tanaji D. Rode, API, Kalwa Police Station, District - Thane,
present.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 10, 2018.

P.C. :

This is an application for bail under Section 439 of Cr.P.C. in connection with C.R.No.I-183 of 2018, registered with Kalwa Police Station, District-Thane, on 16th May, 2018, for the offences punishable under Sections 307, 498(A), 313, 504 and 506(II) read with Section 34 of Indian Penal Code ("IPC", for short).

2 The prosecution case is that the complainant is the wife of applicant no.1. She lodged the FIR on 16th May, 2018, in respect to the incident dated 5th April, 2018. It is alleged that the marriage between applicant no.1 and the complainant was performed in the year 2012. Applicant no.1 runs a grocery shop at Kalwa, District-Thane. One daughter is born out of wedlock. She is aged about five years. Initially the marital life was going on smoothly. However, since one year the mother-in-law, father-in-law and the husband started harassing the complainant by picking up quarrels on account of preparation of food and as to why she has given birth to female child. However, she was hopeful that everything will be smooth and hence, did not lodge any complaint. In the last week of March 2018, when she was carrying pregnancy of nine months and was feeling stressed after work, she was taking rest, her husband and father-in-law picked up quarrel alleging that she cannot cook food properly and for giving birth to female child. In spite of informing that she is taking rest, the husband and father-in-law quarreled with her and threatened her. She informed the said incident to her brother residing at Gujarat. Her brother had informed her brother-in-law. The brother-in-law Megharam Kumawat is resident of Badlapur and another brother-in-law Vararam Kumawat is

resident of Kharegaon, Kalwa, District-Thane. The accused again started harassing her. On 4th April, 2018, the complainant contacted her sister and told her that she should be taken to her house. On the same day her brother-in-law, sister and cousin sister came to and gave the understanding to the applicants. The relative of the complainant narrated about the harassment and at that time applicant no.2 told them that there is no harassment from their side. The father-in-law (accused no.2) told them not to take complainant with them as the delivery is due shortly and she is taking treatment. It is alleged that when her relatives left from her matrimonial house, the applicants again started quarreling with her on the same issues. At about 11:30 she went to house of her brother-in-law Kamlesh to inform him about harassment, but, he was in the shop. His wife Rekha was at home. It is alleged that when she narrated the incident of harassment to Rekha, she was abused by her. On 5th April, 2018, at about 5:00 a.m. while she was sleeping in house the complainant felt that somebody had caught her hands and legs and hence she woke up. At that time the applicants allegedly gagged her mouth by piece of cloth and both of them allegedly lifted her brought her in the gallery, took her at some distance and then thrown her from the third floor. On account of the fall, she sustained injuries. On seeing her alive, the

father-in-law abused her. She was threatened that she should not disclose the incident or else they would kill her daughter Harshada. At that time, neighbours gathered there and she was taken to the hospital. She was admitted in the hospital. She delivered girl child which was dead at the time of delivery. Thereafter, she was treated in hospital. After discharge from the hospital she went to house of her sister at Badlapur. She informed the incident to her sister, brother-in-law and brother on 5th April, 2018. FIR was lodged on 16th May, 2018.

3 Learned counsel for the applicants submitted that the FIR is lodged belatedly after a period of 1 ½ month after the incident. The complainant has falsely implicated the applicants in the crime. It is submitted that there is no eye witness to the incident to corroborate the case of the complainant that she was lifted and thrown from third floor by the accused. The evidence on record indicates that the victim/complainant had jumped from the third floor and as a result of which she had sustained injuries. It is submitted that according to the prosecution, the complainant was discharged from the hospital on 13th April, 2018, and, thereafter, she has started residing with her sister at Badlapur. Although, she had allegedly disclosed the incident to her sister

and others immediately after the incident, no complaint was lodged either by the sister, her brother-in-law, brother or complainant. It is further submitted that the statement of the witness Shyambahadur Upadhyay indicate that the victim was found lying below the building in an injured condition, however, he did not notice that her mouth was gagged by cloth. It is further submitted that the fact that the complaint was lodged belatedly shows that the applicants are falsely implicated in the crime. The medical opinion obtained by the investigating machinery does not support the case of the complainant that she was thrown by the accused from third floor. It is further submitted that the complainant was pregnant and there is every possibility that the persons undergoing pregnancy are likely to have abnormal behaviour. Learned counsel for the applicant relied upon the research conducted by the School of Social Work for their views and experience of mood and disorder, with regards to behavior of the persons who are undergoing pregnancy which indicate that there may be suicidal tendencies amongst such persons.

4 Learned APP submitted that the statement of complainant categorically mentions that she was thrown by the

accused from the third floor as a result of which she had sustained injuries. It is further submitted that the complainant and other witnesses has depicted the harassment caused to her by the accused. She was harassed on the ground that she was not cooking food properly and she has delivered a female child. It is further submitted that as a result of the incident, child who was in the womb had died at the time of delivery. The applicants are involved in a serious crime. Merely because there is delay in lodging the FIR, they cannot be absolved from the serious crime under Section 307 of IPC. It is submitted that the statements of sister, brother-in-law of the complainant also corroborates the version of the complainant. She was continuously subjected to harassment. The complainant did not lodge complaint due to fear on account of threats by applicants.

5 I have perused the documents on record. The incident had occurred on 5th April, 2018. The FIR was lodged on 16th May, 2018. The complainant was discharged from the hospital on 13th April, 2018. Subsequently, according to the complainant, she had started residing at her sister's house at Badlapur. It is also the case of the prosecution that the incident was narrated by the victim to her sister, brother-in-law and brother on 5th April, 2018.

However, the alleged incident is of serious nature, no complaint was lodged either by the complainant or others to whom the incident was disclosed. There is no eye witnesses to the incident stating that the complainant was thrown from the third floor by applicant.

6 The following circumstances emanating from the evidence on record need to be considered for grant of bail to the applicants.

- (a) The alleged incident had occurred on 5th April, 2018, whereas FIR was lodged on 16th May, 2018. The complainant was discharged from hospital on 13th April, 2018, and she had started residing with her sister. In the FIR, she has stated that she did not disclose the incident to anyone. On inquiry by police also she did not disclose incident to police. According to complainant, she had disclosed the incident to her sister, brother-in-law and brother on 5th April, 2018. However, no one had lodged complaint till 16th May, 2018. The complaint has alleged that she was under fear due to threats by accused. However, the other relatives also did not lodge complaint.

- (b) The complainant has also alleged that the accused had clogged her mouth by piece of cloth. Probably complainant was trying to convey that she could not shout due to the said fact. Statements of independent witness Shyam Upadhyay indicate that on 5th April, 2018, he noticed that applicant no.1 was holding his daughter and crying and he pointed out that victim was lying below building. He did not notice that her mouth was clogged with cloth. Applicant no.1 rushed to the said place along with his daughter. He also saw that both applicants, policemen from the said area Mr.Rathod and son of the witness took the injured to hospital. He had not noticed any quarrels between accused and the complainant.
- (c) Statement of Loknath Sharma was recorded on 23rd June, 2018. He is working as watchman of the said building. He heard loud words uttered by someone as "*Ruk ja*". Then he noticed that one women had fallen on the ground. Her mouth was not clogged with cloth and her hands and legs were not tied. The applicants and others took her to hospital. The circumstances infer that some one had told the victim to stop, probably from jumping.

- (d) The statement of Ramdas Rathod recorded on 21st May, 2018, reflect that he had visited the spot and the victim was found lying at the place of incident. Applicant no.2 informed him that the victim is his daughter in law. The applicant no.2, witness and others took her to the hospital.
- (e) Statement of Savitri Upadhyay states that applicants are her neighbours. On 5th April, 2018, she heard applicant no.1 crying. He was holding his daughter and informed that his wife has jumped down. Victim was lying on ground. Applicant no.1 ran towards her. Thereafter, both applicants and Mr.Rathod took the victim to hospital.
- (f) Statement of Smt.Deoli Kumavat and her husband Megharam Kumavat state that after discharge of complainant from hospital, she was taken to their house at Badlapur and on 5th April, 2018, victim had informed them as well as her brother about incident. However, no complaint was lodged by them or complainant immediately.

- (g) Statement of Smt.Seema Upadhyay shows that applicants are her neighbours. She noticed applicant no.1 crying and he pointed out at complainant who was lying on the ground. Her legs were not tied nor mouth was clogged with cloth. Applicants and others took the victim to hospital. The complainant had never complained about ill treatment from applicants. The witness had not seen them quarelling.
- (h) Statement of Smt. Sangita Doke, who is a neighbour do not refer to any quarrels between accused and complainant.
- (i) It is also pertinent to note that the police had sought an opinion from Titan Hospital whether injuries sustained by complainant were due to throwing her from third floor or whether the injuries were due to jump from third floor. The opinion given by hospital mentions that from the type of injury when patient was brought/came to hospital, as mentioned in case paper, injury can happened in both cases i.e. accidental or in homicidal attempt or even in suicidal attempt.

- (j) The complainant was admitted to hospital after the incident. The statements of witnesses shows that applicants had taken her to hospital immediately. The complainant has stated that she was admitted to Titan Hospital. She was also admitted to Vedant Hospital for CT Scan and again to Titan Hospoital. Apparently, the accused had admitted her to hospital for treatment.
- (k) No action initiated by police immediately. From statement of complainant, it is evident that she did not disclose the incident to police although enquiry was made with her. The version of complainant came to light for the first time on 16th May,2018. There is no eye witnesses stating that victim was thrown from third floor. Taking into consideration aforesaid aspects, case for grant of bail is made out.

6 Hence, I pass the following order.

:: ORDER ::

- (i) Bail Application No.3120 of 2018, is allowed;

- (ii) Applicants is directed to be released on bail in connection with C.R.No.I-183 of 2018, registered with Kalwa Police Station, District-Thane, on their furnishing P.R. Bond in the sum of Rs.25,000/-, each, with one or more sureties in the like amount;
- (iii) Applicants shall report Kalwa Police Station, District-Thane, on first Saturday of the month between 11:00 a.m. to 1:00 p.m., till conclusion of trial;
- (iv) Applicants shall attend the trial Court regularly on the date of hearing, unless exempted by the Court;
- (v) Applicants shall not tamper the prosecution witnesses;
- (vi) It is clarified that the observations made in this order are *prima facie* for grant of bail and the trial Court shall not be influenced by the same at the time of trial.

(vii) Bail Application No.3120 of 2018, stands
disposed of.

(PRAKASH D. NAIK, J.)