

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

BAIL APPLICATION NO. 2971 OF 2017

Dnyaneshwar Govind Gawari.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Priyal G. Sarda, advocate for Applicant.

Mr. Y.M. Nakhwa, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 12, 2018**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 17/1/2017 in Crime No. 17/2017 for offence punishable under section 498A, 306 of the Indian Penal Code.

3 It is the case of the prosecution that the applicant was married to Asha at Alandi. It was love marriage. The couple was blessed with one son and one daughter i.e. Sarthak and Arya. The applicant works as driver on the school bus. On 12/1/2017 at about 2.15 p.m. To 2.30 p.m. he received a phone call from his wife Asha informing him that she is about to consume poison and also administer the same to her children and he had immediately dropped school children to their respective houses, parked the bus at the school and had returned home only to find his wife dead. It appeared that she had consumed some poison namely, Thymit and had also administered the same to her children. On the basis of the said report, A.D. Report No. 3 of 2017 was registered under section 174 of the Code of Criminal Procedure, 1973.

4 On 16/1/2017 father of Asha namely Navaji Mahadu lodged a report at the police station alleging therein that 2 months prior to her death, Asha had disclosed to her mother that the applicant is having illicit intimacy with another woman and therefore, had asked Asha to

go to her maternal house alongwith children. According to the first informant, due to harassment meted out to her at the hands of the present applicant, Asha had committed suicide by consuming poison and had also administered the same poison to her children and killed them.

5 In the course of investigation, the statement of one Lalita Vayal was recorded. She had disclosed to the police that she had also parted ways with her husband in August, 2015. She had admitted her son in Shivajirao Valunj English Medium School in Avhat, Taluka Khed. She was offered job to work as peon in the said school. She had accepted offer and was employed with the said school on salary of Rs. 2000/-. The applicant was working as school bus driver. They have got acquainted with each other subsequently. They had developed love relations. The applicant had proposed to her. Initially, she had refused proposal on the ground that he is married man with two children. According to her, wife of the present applicant had learnt about their relations two months ago. On

12/1/2017 she had learnt from the present applicant that his wife had committed suicide.

6 It is the contention of the learned Counsel for the applicant that the applicant had intimate relations with another woman, but by the said act he had not instigated his wife to commit suicide. In fact, he had asked her to stay with her parents. It cannot be said that the applicant had abetted, facilitated or instigated commission of suicide. It could be an offence under section 498A of the Indian Penal Code. However, it cannot be said that the applicant would be responsible for death of his wife and two children. The applicant is in custody since 17/1/2017. The investigation is completed and charge-sheet is filed. Hence, the applicant deserves to be enlarged on bail.

7 However, it is made clear that the observations made herein are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be considered for the purpose of quashing of FIR or discharge application or at the time of trial.

8 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. 50,000/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall not tamper with the evidence.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)