

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3014 OF 2017***

Vishwajeet Vasant Phalke	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 3019 OF 2017**

Abhijeet Vasant Phalke	.. Applicant
vs.	
The State of Maharashtra	..Respondents

Mr. Dnandei Dashrath Shide , for the applicant in BA No.3014/2017
Mr. Anil Shitole for the applicant in BA No.3019 of 2017.
Ms. P.P.Shinde,APP, for the State in BA No.3014 of 2017.
Ms. S.S.Kaushik, APP for the State in BA No.3019 of 2017.

***CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 17th January, 2018.***

P.C. :

1. Heard. There are the applications under Section 439 of the Code of Criminal Procedure, 1973. The applicant in Criminal Bail Application No.3019 of 2017 is arrested on 13.7.2017 and the applicant in Criminal Bail Application No.3014 of 2017 is arrested on 29.7.2017 in C.R. No.476 of 2017 registered with Pandharpur City Police Station for the offences

punishable under Sections 498A, 306, 323, 504, 506 read with Sec. 34 of the Indian Penal Code.

2. It is the case of the prosecution that the applicant in Criminal Application No.3019 of 2017 was married to Chaitali on 18.12.2014. The couple is blessed with a daughter namely Aradhya. It is the case of the prosecution that on 12.7.2017, Chaitali committed suicide in her matrimonial house. On 13.7.2017, the father of deceased Chaitali lodged a report at the police station alleging therein that his daughter was married to Abhijeet on 18.12.2014. That at the time of marriage, he had given precious gifts to his daughter. That there was a demand of Rs.1 lakh which was fulfilled. That the first informant had also given 25 gms. of gold jewellery to his daughter. It is also alleged that soon after marriage, Chaitali was being harassed by her husband as well as her in-laws and they used to taunt her saying that her father has given insufficient gold to her. There was a demand of Rs.1,50,000/-. The daughter of the first informant had informed her father that Abhijeet i.e. her husband wants to take an oil agency and, therefore, he was demanding money. Accordingly, the first informant had deposited Rs.60,000/- and subsequently Rs.80,000/- with Axis Bank. Abhijeet had received the same. However, according to the

father, his daughter had intermittently informed him that she is being harassed and ill-treated by her husband. It is further alleged that one week prior to 13.7.2017, his daughter had informed him that her husband is demanding an amount of Rs.50,000/- for opening a Mangal Karyalaya. It is also alleged that when she was not paid, she was ill-treated and harassed and finally on 12.7.2017 at about 11.45 a.m., she committed suicide by hanging, in her matrimonial house.

3. The supplementary statement of the complainant was recorded on 29.7.2017, wherein it was alleged that the other members of the matrimonial family i.e. in-laws were also harassing and ill-treating her on account of demand of money and hence, the applicant in Criminal Application No.3014 of 2017 was also arrested. The applicant in Criminal Application No.3014 of 2017 happens to be the brother-in-law of deceased Chaitali. They resided in a joint family.

4. The investigation is completed and charge sheet is filed against the accused for the offence punishable under Section 304-B of the Indian Penal Code.

5. The learned counsel for the applicant submits that it is admitted that Abhijeet had received an amount of Rs.1,40,000/-. However,

it was by way of a hand loan and could not have been termed as dowry. The learned counsel for the applicant – Abhijeet submits that Chaitali was unhappy. She graduated from Fergusson College, Pune. She used to a luxurious life style. She wanted to live in urban atmosphere. Unfortunately, her husband Abhijeet has hardly passed his higher secondary education i.e. 12th Std. That the brother of the applicant happens to be an Engineer. His sister has also graduated as an Engineer and she is appearing for her competitive exam for which she was studying in Pune. According to the learned counsel, Chaitali was unhappy about the same. Moreover, she was residing in a small town like Pandharpur. It is within the special knowledge of the applicant that Chaitali wanted to reside in an urban atmosphere and had expressed her displeasure to him on many occasions. According to the learned counsel, since the amount was extended as a hand loan, the applicant was bound to return after a few years. Hence, it is submitted that Chaitali was not meted with ill-treatment or harassment at the hands of the applicant. It is also submitted that on 12.7.2017, there was no incident which could have triggered her emotions and there is no material to show that the applicant was responsible for the suicidal death of Chaitali. It is an admitted position even according to the prosecution that at the relevant

time, the applicant – Abhijeet was in his garage, whereas Vishwajeet was at home and his statement has been recorded as a witness. In fact, the mother of the applicants was calling upon Chaitali who was in her bedroom, the door was not being opened and therefore, she was constrained to call Abhijeet from the garage. He had rushed home and they had to break open the door. They had found Chaitali hanging. They had taken Chaitali to the hospital where she was declared dead on admission. The statement of Vishwajeet which was recorded on 12.7.2017 would indicate that they had attempted to save Chaitali by all means as they had suspected that it could be an unsuccessful attempt to commit suicide. She was initially taken to Apex Hospital and thereafter to District Hospital, Pandharpur. It is in these circumstances that both the applicants deserve to be enlarged on bail.

6. The learned APP submits that the demand for Rs.50,000/- is in close proximity with the suicidal death of Chaitali. According to the learned APP, a presumption under Section 113-B of the Indian Evidence Act is to be drawn since the death was within 7 years of marriage and there was specific allegation and material that the amount of Rs.1,40,000/- was extended to Abhijeet and therefore, according to her, the applicants do not deserve to be enlarged on bail.

7. The Hon'ble Supreme Court in the case of **Girdhar Shankar Tawade vs. State of Maharashtra (2002 (3) SCR 376** observed as follows :

“As regards the core issue as to whether charges under Sections 306 and 498-A of the Indian Penal Code are independent of each other and acquittal of one does not lead to acquittal on the other, as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further dilation is not necessary neither we are inclined to do so, but in order to justify a conviction under the later provision there must be available on record some material and cogent evidence. Presently, we have on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereon - the documentary evidence (namely, those three letters), in our view, falls short of the requirement of the Statute”:

In the present case, there is no letter on record to show that the deceased was being harassed, ill-treated or assaulted for demand of dowry.

8. Taking into consideration the papers of investigation, material collected during the course of investigation and the submissions advanced across the bar, it can be inferred that Chaitali had committed suicide. Taking into consideration the facts of the case and the submissions advanced across the bar, the applicants deserve to be enlarged on bail.

9. The observations are prima facie in nature and shall not be

taken into consideration for the purpose of deciding the quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The applications are allowed.
- (ii) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each and one or more solvent sureties in the like amount.
- (iii) The applications are allowed and disposed of.

(SMT. SADHANA S.JADHAV, J.)