

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2533 OF 2019

Aayesha Minaj Nallabandu] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Sachin Deokar i/b Mr. Mohammad S. Mulla, Advocate for the Applicant.

Mr. Prashant Jadhav, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 16th SEPTEMBER, 2019.

P. C. :-

1. The applicant is seeking her release on bail in connection with C.R.No.267/2019 registered with Valsang Police Station, Solapur Rural u/sec.306 r/w 34 of I.P.C.

2. The FIR is lodged on 27/07/2019 by Altaf Mohammad Harun Nallabandu who was brother of deceased Minaj. He has stated in his FIR that, his brother Minaj was married to the applicant and they were residing with their children at Godutai Parudekar Vidi Gharkul, Solapur. Minaj had told the informant that, the applicant was having

illicit relations with a third person. The informant had told him that, he should not entertain such suspicion. Minaj had seen some objectionable photographs in the applicant's mobile phone. He was disturbed. The subject was broached in village panchayat. The applicant and her paramour were warned by the panchayat. The applicant had promised not to have any relationship with that third person. However after a few days again she continued with her illicit relationship. The deceased had approached the applicant's brothers Kasim and Mateen. Instead of reprimanding their sister, they threatened Minaj. Getting fed up, the deceased committed suicide by hanging himself on 25/07/2019 and therefore, this FIR is lodged.

3. The applicant was arrested on 27/07/2019 and since then she is in custody.

4. Heard Mr. Sachin Deokar, Ld. Counsel for the Applicant and Mr.Prashant Jadhav, Ld. APP for the State/Respondent.

5. Mr. Deokar submitted that, assuming that the applicant was having extra marital affair with a third person that will not amount to abetment to commit suicide as mentioned u/sec.107 and 306 of I.P.C.

He relied on the observations of the Hon'ble Supreme Court in case of **K.V. Prakash Babu Vs. State of Karnataka, (2017) 11 Supreme Court Cases 176**. In paragraph 18, the Hon'ble Supreme Court has observed thus ;

“18. Having said that we intend to make it clear that if the husband gets involved in an extra-marital affair that may not in all circumstances invite conviction under Section 306 of IPC but definitely that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. And we so clarify.”

6. Ld. APP relied on the averments in the FIR and contended that, the deceased was forced to commit suicide because of the applicant's infidelity.

7. I have considered these submissions. Mr. Deokar has informed that, brothers Kasim and Mateen of the applicant are already granted anticipatory bail. The FIR shows that, they had threatened the deceased. The allegations against the applicant are that, she was having illicit relationship with a third person. It was strongly opposed

by the deceased. However, it is difficult to observe at this stage that, such act of infidelity would amount to abetment to commit suicide. Mr. Deokar relied on the judgment of the Hon'ble Supreme Court referred to herein above. In that case, the situation was reversed as the wife had committed suicide. However, the observations in Paragraph 18 can be applied to the present facts of the case. However, this question will have to be decided by the Trial Court after the entire evidence is recorded. Today, though the charge-sheet is not filed, the allegations do not travel beyond the case stated in the FIR. Therefore, though the applicant's behaviour cannot be justified, it may not amount to abetment as defined u/sec. 107 of I.P.C. It is made clear at the cost of repetition that, this fact will have to be decided during trial. At present, the applicant is in judicial custody. The investigating agency has had sufficient opportunity to interrogate her, therefore no further purpose will be served by keeping the applicant in custody during the entire period of investigation and trial. Therefore, I am inclined to grant bail to the applicant. Hence, the following order.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No.267/2019 registered with Valsang Police Station, Solapur Rural, on her furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)