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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.108 of 2020
WITH
APPLICATION FOR CANCELLATION OF BAIL NO.107 of 2020

Rohidas s/o Uttam Beldar = APPLICANT
(Orig.Complainant)

VERSUS

1) The State of Maharashtra
and Ors. = RESPONDENT/S

Mr.NL Jadhav,Advocate for Applicant;
Mr.SW Mundhe,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 9th October, 2020.

PER COURT:-

1. Both the applications have been filed under Section 439(2) read with Section 482 of Code of Criminal Procedure for cancellation of anticipatory bail granted in favour of Respondent Nos.2 & 2 in ACB No.108/2020 and regular bail granted to Respondent No.2 in ACB No.107/2020, by learned Additional Sessions Judge, Dhule in Regular Bail Application No.396/2020 on 21.9.2020.

2. Heard learned Advocate Shri NL Jadhav for applicant in both the matters and learned APP Shri

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SW Mundhe for Respondent No.1-State. After hearing them, it was found that it is not even necessary to issue notice to the respondents.

3. It was vehemently submitted on behalf of the applicant that the applicant is original informant, who filed FIR bearing CR No.40/2020 on 12.4.2020 against the present respondent Nos.2 & 3 in one matter and Respondent No.2 in another matter for the offences punishable under Sections 306, 498A, 323, 504, 506 read with 34 of IPC. The daughter of the present applicant was married to Babulal – Respondent No.2 in ACB No.107/2020. She was treated properly for few days only, but thereafter, she was harassed by her in-laws and husband. Even an undertaking was given in writing by the husband that he will not harass or ill-treat his wife. In spite of that, the harassment continued. Two children are born to deceased daughter of the applicant, who was driven out of house along with her daughter after harassment. Again after taking assurance, they were sent back to the home. A case was also filed at Parola Court against the husband and his relatives and the

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daughter of the applicant started residing with them. During pendency of the said case, her husband and father-in-law requested her to cohabit and, therefore, after consultation of the Advocate, she was sent for cohabitation. At about 7.00 AM on 11.4.2020, the daughter informed the applicant that Babulal is beating her and, therefore, she requested him to take her back. However, due to pandemic situation, he could not go and about 11.00 AM, brother-in-law of the daughter informed the applicant that they are taking the daughter to his hospital and he should also reach immediately. Accordingly, he and his wife went to Kapadne, but came to know that the daughter has been taken to Songir. He came to know that she was administered poison and ultimately, she succumbed to the poison. He filed an FIR and on the basis of it, the offence has been registered. However, taking into consideration, in fact, the injuries on the person of the deceased, which are reflecting in column No.17 of the post-mortem report, it can be said that the said consumption of poison cannot be said to be voluntary. Therefore, in fact, the police ought to have registered offence under Section 302

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of IPC. The exact cause of death is not yet reflected and, therefore, possibility of murder ought to have been considered by the learned Additional Sessions Judge. Though serious offence has been committed; yet Resp.Nos.2 and 3 in ACB No. 108/2020 have been enlarged on anticipatory bail; whereas regular bail is granted to Respondent No.2 in another matter, which deserves to be cancelled.

4. At the outset, it is to be noted that, at present, the offence, that has been registered against present Respondent Nos.2 and 3 and No.2 in another case, is under Section 306 of IPC with other IPC sections. No doubt, the FIR cannot be an encyclopedia and, therefore, on the basis of whatever information that was received to the informant, he might have given the statement; yet the fact remains that, as on today, taking into consideration the post-mortem report, it is not opined as to whether death in question is homicidal or suicidal. When the complainant himself has come with a case that his daughter has committed suicide, then unless proper legal procedure is adopted, there cannot be registration of offence

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under Section 302 of IPC. On the basis of whatever material was placed before the Additional Sessions Judge, he has come to the conclusion that physical custody of the applicants in Anticipatory bail is not required. Further, as regards the respondent No.2 is concerned, he was arrested; an opportunity of investigation was given against him and thereafter he has been granted regular bail. The bail, which has been granted, cannot be cancelled on the basis of some hypothetical submission, or in other words, in fact, an offence ought to have been registered under different sections. The present material is required to be considered and then it is required to be seen whether custody of that accused is required for the purpose of investigation or not.

5. Bail is Rule and jail is exception. The parameters of bail under Section 438 as well as 439 of Cr.P.C. have been properly considered by the learned Additional Sessions Judge and, therefore, no case is made out to cancel the bail granted to Respondent Nos.2 and 3 and Respondent No.2 in respective matters. The discretion has been

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properly and judiciously exercised, requires no interference. Both the applications stand rejected.

(SMT. VIBHA KANKANWADI,J.)

BDV