

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**ANTICIPATORY BAIL APPLICATION NO. 1065 OF 2020
WITH
CRIMINAL APPLICATION NO.2142 OF 2020**

1. Chitra Shivaji Kharsade

2. Anita Ranjit Kharsade ...Applicants

Versus

The State of Maharashtra ...Respondent

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Mr. V.B. Deshmukh, Advocate for the applicants.
Mr. S.Y. Mahajan, APP for the respondent-State.
Mr. A.U. Chandel, Advocate for Assist to P.P.

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**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 17th DECEMBER, 2020.**

ORDER:-

1. Present application has been filed by original accused nos. 2 and 3 for getting bail under Section 438 of the Code of Criminal Procedure, as they are apprehending their arrest in connection with Crime No.243 of 2020 registered with Paranda Police Station, District Osmanabad for the offences punishable under Section 304(B) read with 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. V.B. Deshmukh for the applicants and learned APP Mr. S.Y. Mahajan for the respondent-State, who is well assisted by Advocate Mr. A.U. Chandel representing the respondent.

3. It has been vehemently submitted on behalf of the present applicants that the FIR has been lodged by the father of the deceased Sanjivani. Sanjivani got married to the son of present applicant no.1 on 11.05.2015. Applicant no.2 is another daughter-in-law of applicant no.1 (wife of another son). It is contended that involvement of the applicants is an afterthought act with a concocted story. Applicant no.1 resides at Tandulwadi, Taluka Paranda, District Osmanabad. Applicant no.2 resides at Shivaji Nagar, Taluka Paranda, District Osmanabad whereas, the deceased along with her husband use to reside in Teachers Colony in Paranda. When all of them were residing separately from each other though in the same village, but they had no day-to-day concern. The husband of the deceased was residing with her separately since 2015 i.e. after marriage. Mutation Entry No.1386 dated 16.06.2015 produced on record indicates the said thing. There was a matrimonial dispute between Sanjivani and her husband. Sanjivani had initiated proceedings for Maintenance and Restitution of Conjugal Rights against her husband, so also it appears that she had lodged FIR under Section 498-A of the Indian Penal Code. However, in the present FIR itself it is mentioned that there was a compromise and Sanjivani resumed cohabitation with her husband. Therefore, now it appears that the prosecution has not invoked offence under Section 498-A of the Indian Penal Code once again. On the

basis of the present FIR, offence under Section 304(B) has been invoked. It is the contention of the informant that in spite of started cohabitation with the husband, the present applicant no.1 and the father-in-law of the deceased occasionally use to go to Paranda. All the other relatives including the present applicants and husband use to ask Sanjivani to wash the clothes of the house of her brother-in-law and so also wash utensils. Applicant no.2 use to give phone call to Sanjivani and say that she should come for cohabitation as Rahul-husband of the deceased was facing problem for the meals. It is then stated that at the time she was left by the informant, he had given amount of Rs. 1 lakh which was remaining since marriage, so also 2 tolas of gold, but it is stated that at that time, Rahul once again ask that further remaining amount of Rs.1 lakh from dowry and more i.e. extra Rs. 1 lakh should be given. The informant promised to give it at a later point of time. 8 to 10 days thereafter, Sanjivani gave a phone call from the phone of another person and told that husband is ill-treating her. The informant received the information at about 12.00 pm on 13.10.2020 that Sanjivani has expired due to hanging. In fact, no role has been attributed to the present applicants after Sanjivani resumed cohabitation and therefore, their custodial interrogation is not necessary.

4. Learned APP well assisted by the learned Advocate representing the informant vehemently submitted that the

custodial interrogation of the applicants is necessary as they were behind the fact to bring Sanjivani for cohabitation, though she had disputes with her husband. They use to ask Sanjivani to work in the house of applicant no.2. The harassment continued and therefore, she died in unnatural circumstances. The custodial interrogation is necessary for the purpose of investigation.

5. At the outset, the facts are required to be considered which are given in the FIR as it is. No doubt, unfortunately Sanjivani has ended her life by hanging herself, but when offence has been registered then the circumstances under which the alleged crime has been committed is required to be considered. The informant who is the father of the deceased has given the entire story as to how all the family members of husband of the deceased had harassed her, demanded amount from her to be brought from him. However, when he says that Crime No.93 of 2016 was filed against the husband, mother-in-law, father-in-law, brother-in-law and sister-in-law of the deceased for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code and it is stated that it is still pending, yet, thereafter Sanjivani started cohabitation with the husband. It is stated that after Sanjivani had filed petition for maintenance, she was granted maintenance at the rate of Rs.6,000/- per month. It was told by Rahul-husband to the Court that he will not pay the

maintenance but he would take Sanjivani for cohabitation. Thereafter, it appears that the Court had directed Sanjivani to resume cohabitation. Though those wordings in the FIR are rustic, yet, we can take a note of the fact that there was a compromise which was even accepted by the Court and thereafter, the informant says that after that direction was given by the Court, her husband sent his cousin brother Prashant to fetch Sanjivani back for cohabitation after three weeks. The informant sent Sanjivani along with the said Prashant and another person on 10.12.2018. Further contents of the FIR are not clear as regards where their post settlement or prior to settlement which are in respect of the allegations that the parents-in-law use to go to Paranda and all of them asking Sanjivani to do domestic work in the house of her brother-in-law, but then it is stated that applicant no.2 use to give phone call to Sanjivani and ask her to resume cohabitation and therefore, he had left Sanjivani to the house of her husband on 23.08.2020. Important point to be noted is that, when Sanjivani was sent along with Prashant on 10.12.2018, then unless she would have again left at her parental place, there was no occasion for the informant to leave her back to the house of her husband on 23.08.2020. Therefore, something is missing or the chronology in the FIR is not correct. As aforesaid, the FIR is silent on the point when the settlement took place. No doubt, it is also mentioned that

after asking her to do domestic work after she resumed cohabitation on 10.12.2018, Sanjivani used to be driven out of the house on the count that she should bring gold and cash, which was promised at the time of marriage and this use to happen after every 2 to 3 months. This appears to be a story which the informant wants to fill up in respect of the two incidents.

6. At present, the present FIR is only under Section 304(B) read with 34 of the Indian Penal Code and taking into consideration the ingredients of the said offence, the contents of the FIR would show that the informant left Sanjivani with her husband on 23.08.2020 and at that time, he had given certain amount and further amount was demanded by Rahul-husband and there is no role assigned to the present applicants. Thereafter, directly the incident dated 13.10.2020 is mentioned wherein he says that he received a phone call from a number from which one Raju Patil was speaking and that person informed the present informant that Sanjivani has expired due to hanging. It is absolutely not clear from the FIR that just prior to her death, in any way the present applicants had come in contact with Sanjivani. Under such circumstance, the physical custody of the applicants for the purpose of investigation is not necessary and therefore, their application deserves to be allowed. Hence, the following order is passed:

ORDER

- I) The application stands allowed.
- II) The order passed by the learned Additional Sessions Judge, Bhoom, District Osmanabad in Criminal Bail Application No.212 of 2020 dated 29.10.2020, is hereby set aside. The said application stands allowed.
- III) The ad-interim protection, granted by this Court earlier to the applicants vide order dated 10.11.2020, is hereby confirmed and made absolute. In other words, in the event of arrest of the applicants - Chitra Shivaji Kharsade and Anita Ranjit Kharsade in connection with Crime No.243 of 2020 dated 13.10.2020 registered with Paranda Police Station, District Osmanabad for the offences punishable under Section 304(B) read with 34 of the Indian Penal Code, they be released on P.R. and S.B. of Rs. 15,000/- (fifteen thousand) each.
- IV) The applicants shall not tamper with the evidence of the prosecution in any manner.
- V) The applicants shall not indulge in any criminal activity.
- VI) Criminal Application No.2142 of 2020 for Assist to P.P. is allowed and disposed of.

(SMT. VIBHA KANKANWADI, J.)