

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.993 OF 2020

- 1) Firozabi Shakeel Pinjari,
Age 25 years, Occupation Housewife,
R/o Anturli Taluka Pachora
District Jalgaon.
- 2) Sharifa Saybu Pinjari,
Age 44 years, Occupation Housewife,
R/o Khadak Sim, Taluka Chalisgaon
District Jalgaon.

...Applicants

VERSUS

The State of Maharashtra,
Through Bhadgaon Police Station,
Taluka Bhadgaon Dist. Jalgaon.

...Respondent

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Advocate for Applicants : Mr. Sagar S. Chitre and
Mr. Vijay B Patil.
APP for Respondent-State : Ms. R. P. Gour.
Advocate for Assist to APP : Mr. S. A. Ambad.
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WITH
ANTICIPATORY BAIL APPLICATION NO.985 OF 2020

- 1) Rashida Hamid Pinjari,
Age 52 years, Occupation Nil,
R/o Khadka Sim Tq. Chalisgaon
At Present Shiv Darshan Colony,
Dhule Road, Chalisgaon,
Taluka Chalisgaon Dist. Jalgaon.
- 2) Altaf Hamid Pinjari,
Age 29 years, Occupation Service,
R/o Shiv Darshan Colony,

Dhule Road, Chalisgaon,
Taluka Chalisgaon Dist. Jalgaon
At Present Jamka Mohalla, Dhule **...Applicants**

VERSUS

The State of Maharashtra,
Through Bhadgaon Police Station,
Taluka Bhadgaon Dist. Jalgaon. **...Respondent**

.....
Advocate for Applicants : Mr. Sagar s. Chitre and
Mr. Vijay B Patil.
APP for Respondent-State : Ms. R. P. Gour.
Advocate for Assist to APP : Mr. S. A. Ambad.

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WITH
CRIMINAL APPLICATION NO.2223 OF 2020
IN ABA NO.993/2020

WITH
CRIMINAL APPLICATION NO.2203 OF 2020
IN ABA NO.985/2020

Bhikan s/o Piran Pinjari,
Age 54 years, Occupation Agriculture,
R/o At Post Khedgaon Nandiche,
Tq. Pachora Dist. Jalgaon. **...Ori.Complainant**

VERSUS

- 1) The State of Maharashtra,
Through Bhadgaon Police Station,
Taluka Bhadgaon Dist. Jalgaon.
- 2) Firozabi Shakeel Pinjari,
Age 25 years, Occupation Housewife,
R/o Anturli Taluka Pachora
District Jalgaon.
- 3) Sharifa Saybu Pinjari,

Age 44 years, Occupation Housewife,
R/o Khadak Sim, Taluka Chalisgaon
District Jalgaon.

...Respondents

.....
Advocate for Applicant : Mr. S. A. Ambad
APP for Respondent-State : Ms. R. P. Gour.
Advocate for Respondents No. 2 & 3: Mr.Sagar S. Chitre
and Mr. Vijay B Patil.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 08-12-2020.

ORDER :

1. Criminal Applications No.2223 of 2020 and 2203 of 2020 have been filed for assist to learned APP. Those applications are allowed and disposed of accordingly.
2. All the applicants in ABA No.993 of 2020 and ABA No.985 have been filed application under Section 438 of CrPC, as they are apprehending their arrest in connection with Crime No.262 of 2020, registered with Bhadgaon Police Station Tq. Bhadgaon Dist. Jalgaon for the offence punishable under Section 304 B, 498 A of IPC.
3. Heard learned Advocate Mr. Sagar S. Chitre and Mr. V. B. Patil for applicants and learned APP Ms. R. P. Gour for respondent-State.
4. It has been vehemently submitted on behalf of the applicants

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that the applicants in ABA No.993 of 2020 are the paternal aunt and cousin sister of husband of the deceased whereas the applicants in ABA No.985 of 2020 are the real brothers of the husband of deceased. Information has been lodged by the father of the deceased. Deceased Shahin got married to accused No.1 Shakil on 20-04-2014. It has been contended that after about three years of marriage, all the accused persons started teasing the deceased on account of not conceiving a child. Husband used to beat her as well as give mental torture. They all were asking her to bring amount of Rs.2 Lakh for construction of house. On that count also they started harassing the deceased physically and mentally. There was a engagement ceremony of a younger sister of the deceased on 23-06-2020 for which deceased Shahin and her husband were invited. It is the contention of the informant that after the engagement ceremony was over, accused No.1 started demanding amount of Rs.2 Lakh to the informant, and in his presence, after abusing him and his daughter, he gave threat that unless the amount is given he will not allow Shahin to cohabit. After raising dispute, he took Shahin without having lunch. The informant further says that he received phone call at about 4.30 p.m. on 24-09-2020 by accused No.1 informing him that his daughter has gone missing since 02.00

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p.m., and therefore, the informant along with his relatives went to Chalisgaon. It was told that Shahin has left the house without informing anybody. Thereafter, accused No.1 lodged missing complaint. The informant gave a phone call at about 12.40 p.m. on 02-10-2020 on the mobile phone which deceased used to possess and it was picked up by Police Patil Bhortek. It was informed that dead body of a lady has been found in a well within the jurisdiction of village Bhortek, and therefore, he was invited to identify. After reaching the spot, he found the dead body of his daughter Shahin floating on the water of the well. The dead body was taken out and sent for post mortem, and thereafter, he lodged the report.

5. It has been vehemently submitted further by the learned Advocate for the applicants in both the cases that the physical custody of the applicants is absolutely not required. The FIR does not give the specific role to the present applicants. So also mere use of the word 'harassment', will not attract Section 498 A of IPC. The death of Shahin was due to drowning and when she went missing since 24-09-2020 and her dead body was found on 02-10-2020, any such act connecting the present applicants in connection with her death cannot be "soon before death". The learned

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Advocate representing the applicants in ABA No.993 of 2020 further submitted that the applicants therein are residing separately from the husband of the deceased and they had nothing to do with the internal affairs in the house of deceased and her husband. The FIR does not say that they were present for that engagement ceremony that had taken place on 23-06-2020. The applicants are unnecessarily implicated in the offence.

6. Learned APP well assisted by the learned Advocate representing the informant submitted that the death of Shahin is unnatural and it is under suspicious circumstance. Therefore, it is for the accused persons, especially her husband and brothers-in-law who are residing in the same house, to explain the circumstances which prompted Shahin to leave the house. Specific role is attributed to all the applicants when it is stated that they used to tease Shahin after three years of her marriage that she has not yet begotten any child. Thereafter, they had started demanding amount of Rs.2 Lakh for construction of house. Physical custody of the applicants is required for the purpose of investigation. Possibility of tampering of evidence cannot be ruled out.

7. At the outset, it is to be noted from the police papers that

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accused No.1-husband of deceased was arrested on 03-10-2020 itself i. e. immediately after lodging of the FIR. The relationship of the present applicants is required to be considered and taking into consideration the said relationship, the allegations those have been made are required to be considered. As the contents of the FIR are already mentioned, they are not required to be reproduced. Perusal of the FIR would show that specific role is not attributed, and it is stated that, along with the accused No.1 the present applicants used to harass by giving insulting words on the count that she has not begotten any child. Even if for the sake of arguments we accept the thing as it is, yet it is stated to have been started from 2017. The informant has not stated as to which act on the part of the present applicants amounted to mental or physical harassment. Use of the insulting words may not always drive a person to commit suicide, and further when it is alleged that the said act was going on since 2017 and till 24-09-2020 it had no such effect on the deceased, then whether those facts would constitute offence under Section 498 A Explanation (A) of IPC is doubtful. Further the FIR says that after some days (the duration of starting point is not disclosed), all the accused persons started demanding amount of Rs.2 Lakh for the construction of the house to Shahin and the informant. In spite of

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pacifying them, yet as per the informant the accused persons were harassing her physically and mentally. Again at the cost of repetition it is required to be stated that particular act of harassment is not disclosed. Further the informant is disclosing about the act which had allegedly taken place on 23-06-2020 at the time of engagement of his younger daughter. But it is to be noted that presence of present applicants at the time of that engagement is not disclosed nor any specific role in that event has not been attributed. Thereafter, directly he refers to the communication by accused No.1 on 24-09-2020. What were the happenings between 23-06-2020 to 24-09-2020 are silent. Now as regards the death of Shahin is concerned, interesting point to be noted is that the post mortem report shows her cause of death as drowning, and in paragraph No.11 describing Regard Mortis it is stated that, the time of death is less than 2 to 3 days which should be from the date of post mortem. Post mortem has been conducted on 02-10-2020. If it is then calculated, then the death would be around 29-09-2020 or 30-09-2020. Shahin went missing since 24-09-2020. The police papers are silent about the investigation in respect of the fact where Shahin was between 24-09-2020 to 29-09-2020 or 30-09-2020. If we perused the panchanama of the spot and the articles those were

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recovered from the said place, they are, one Nokia Company mobile, cash of Rs.150/-, one pair of chappal and one bus ticket. The bus ticket is unreadable. If the death was around 29-09-2020 and the articles were there at the said spot, how it could not have been noted earlier by the owner of the well, is a question. If we consider the AD that was reported by Police Raju Mahajan from village Bhortek, then he gives the information that he received the information about the dead body floating on the surface water of the well at about 03.00 p.m. on 02-10-2020. The said well is stated to be owned by one Prabhakar Wani. Statement of Prabhakar Wani has not been recorded by the Investigating Officer up till now. However, further investigation papers, especially the spot panchanama discloses that the said well is in the field of one Mangalabai Ramchandra Amrutkar. Statement of one Rajesh Amrutkar has been recorded in which he says that the said field is barren and they occasionally go to that place. Statement of said Raju Mahajan, Police Patil, is also again taken regarding correction of the information. No doubt there appear to be some such facts in respect of death of Shahin which require investigation, but at this stage, there is nothing to connect the present applicants with a crime. These are the *prima facie* observations of this Court while

dealing with the bail application only. Under such circumstance, the physical custody of the applicants is absolutely not required. The applicants in ABA No.993 of 2020 have been granted with interim relief by this Court on 03-11-2020, that order deserves to be confirmed and made absolute. Hence, following order.

ORDER

- 1) Both applications are hereby allowed.
- 2) The order passed by learned Additional Sessions Judge, Jalgaon, in Bail Application No.732 of 2020, dated 16-10-2020, and in Bail Application No.729 of 2020, dated 14-10-2020, are hereby set aside. Said applications stand allowed.
- 3) The ad-interim protection, granted by this Court earlier to applicants in ABA No.993 of 2020 on 03-11-2020, is hereby confirmed and made absolute.
- 4) In the alternative if the applicants are not formally arrested, in the event of arrest of applicants Firozabi Shakeel Pinjari, Sharifa Saybu Pinjari, Rashida Hamid Pinjari and Altaf Hamid Pinjari, in connection with Crime No.262 of 2020, registered with Bhadgaon Police Station Tq. Bhadgaon Dist. Jalgaon, for the offences punishable under Section 304 B, 498 A of IPC, they be released on PR and SB of Rs.15000/- each (fifteen thousand).

5) The applicants shall not indulge in any criminal activity and they shall not tamper with the evidence of prosecution in any manner.

6) The applicants shall attend the concerned Police Station, as and when called by the Investigation officer, and shall co-operate with the investigation.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-