

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.38 OF 2021

1) Krushna s/o Bibhishan Hake
and another = APPLICANTS

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr. SJ Salunke, Adv. h/for Mr. NG Talekar, Advocate
for Applicant/s;

Mr. NT Bhagat, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 30th January, 2021.

PER COURT :-

1. The applicants have been arrested in connection with CR No.296/2020 dated 23.12.2020 registered with Washi Police Station, District Osmanabad for the offences punishable under Sections 498A, 304(B) read with 34 of IPC and under Sections 3 and 4 of the Dowry Prohibition Act. The applicants have filed the present application under Section 439 of Cr.P.C. for bail.

2. Heard learned Advocate Mr. Salunke for applicants and learned APP Mr. Bhagat, for Respondent-State.

3. After dis-inclination is shown in respect of applicant No.1 – Krushna s/o Bibhishan Hake to grant any relief as claimed, the learned Advocate appearing for the applicants, on instructions,

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prays for withdrawal of the application in respect of applicant No.1 with liberty to approach the learned Additional Sessions Judge after filing of charge sheet. Therefore, the application in respect of applicant No.1 is allowed to be withdrawn with liberty as prayed.

4. Now, the application remains as regards applicant No.2 – Aakash s/o Bibhishan Hake, who is brother-in-law of the deceased. It has been submitted on behalf of the applicant No.2 that perusal of the FIR does not give any account of overt act as against applicant No.2. There are vague allegations, which may attract section 498A of IPC. However, the FIR does not disclose any incident either happened on 21.12.2020 or immediately prior to that. It has been contended that on 21.12.2020, applicant No.1 had informed the informant (father of the deceased) about missing of his wife, i.e. daughter of the informant. It is further stated that dead body of deceased Pratiksha was found on 22.12.2020 at Saramkundi in a Well. Therefore, offence under Section 304-B of IPC will not be attracted against the applicant. So also, there is no allegation that there was any kind of illegal demand by applicant No.2 to the deceased. Further physical custody of applicant No.2 is not required and, therefore, the learned Advocate for the applicant canvassed for bail to applicant No.2.

5. Per contra, learned APP strongly opposed the application and submitted that there are over acts mentioned as against applicant No.2 also. It

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is specifically stated that present applicant No.2 has damaged the mobile phone of deceased Pratiksha on the ground that she used to give information about the treatment given to her by the applicants to her parents. It is also stated that applicant No.2 used to treat deceased Pratiksha with cruelty and Pratiksha's death is occurred within seven years of her marriage and, therefore, applicant No.2 does not deserve to be released on bail.

6. At the outset, the FIR has been lodged by Somnath Shripati Kamble, who is father of deceased Pratiksha. Pratiksha was married to applicant No.1 on 28.4.2018. It has been contended that it was agreed at the time of the marriage that the informant would give dowry of Rs.50,000/-, however, he could not give it at that time. He says that Pratiksha was treated properly by applicant No.1 for about six months. Thereafter, she was harassed by her mother-in-law; step mother-in-law; husband and present applicant No.2, who is stated to be the step brother of applicant No.1. It is further stated that present applicant and another brother-in-law Dhanu Bibhishan Hake used to assault Pratiksha and the present applicant No.2 had damaged her mobile. Except these statements, no other overt act has been stated in the FIR and, therefore, at the most, it would attract, if further evidence is available, for the offence punishable under Section 498A of IPC. Now, as regards Section 304-B of IPC is concerned, it has been stated in the FIR that applicant No.1 informed the informant on 21.12.2020 that Pratiksha has

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left the house without informing anybody and thereafter when the informant started towards Saramkundi, i.e. matrimonial home of the deceased, he was informed by the police that he should come near the well in the said village. After he went there, he found dead body of his daughter. The FIR also says that due to cruelty/harassment, Pratiksha has committed suicide by jumping into the well. However, the prosecution has not invoked Section 306 of IPC, as it appears. Perusal of the spot panchanamna would show that the Well, in which the dead body was found, was in Gut No.92-B in village Saramkundi owned by applicant No.1. Perusal of the police papers, especially the post mortem report, would show that there were no surface injuries. It also appears from the post mortem report that the deceased was pregnant and there was male fetus. The probable cause of death is due to drowning. With these pieces of evidence, as regards applicant No.2, who is brother-in-law, deserves to be released on bail as further physical custody of applicant No.2 will not be required. Hence, following order, -

ORDER

- i. The Bail Application stands allowed in respect of applicant No.2;
- ii. The applicant No.2 - Aakash s/o Bibhishan Hake, who has been arrested in connection with CR No.296/2020 dated 23.12.2020 registered with Washi Police Station, District Osmanabad for the

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offences punishable under Sections 498A, 304(B) read with 34 of IPC and under Sections 3 and 4 of the Dowry Prohibition Act, he be released on bail on PR of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.

iii. The applicant No.2 shall not tamper with the evidence of the prosecution in any manner nor shall he indulge in any criminal activity.

iv. The applicant should comply with the requirements under paragraphs No.12(1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

v. Bail before the trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV