

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

**BAIL APPLICATION NO.83 OF 2021
WITH
CRIMINAL APPLICATION NO.673/2021**

Shakeel Hamid Pinjari = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.SS Chitre and Mr.VB Patil, Advocates for Applicant;

Mr.SB Narwale, APP for Respondent-State;

Mr.SA Ambad & Mr. RN Kumthekar, Advocates to assist APP.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 9th March, 2021.

PER COURT :-

1. Criminal Application No.673/2021 moved to assist APP is allowed and disposed of.

2. Present applicant has been arrested on 3.10.2020 in connection with CR No.262/2020 registered with Bhadgaon police station, for the offences punishable under Sections 304-B and 498A of IPC. The present application has been filed under Section 439 of Cr.P.C.

3. Heard learned Advocate appearing for the applicant; learned APP for Respondent-State and learned Advocates to assist APP. In order to cut

short it can be stated that all of them have made submissions in support of their respective contentions.

4. It is to be noted that the present applicant is husband of deceased Shaheen. Informant – Bhikan Piran Pinjari is father of the deceased. Present applicant and deceased Shaheen got married on 20.4.2014 and thereafter it is stated that she was residing with the applicant and his family members at Khadki Sim, Tq. Chalisgaon. The informant has stated that after about three years, the present applicant and his parents, brother, cousin sister and paternal aunt of the present applicant used to ill-treat and harass deceased Shaheen on account that she has not begotten any child. Thereafter, they started demanding amount of Rs.2,00,000/- for construction of house. Each time, the informant used to convey them that he has no such financial capacity to extend that much amount. However, on both counts, the deceased has been subjected to ill-treatment mentally and physically by them. Younger sister of deceased Shaheen got engaged on 23.6.2020 and at that time, present applicant was called. The present applicant and others had come and demanded an amount of Rs.2,00,000/- for construction of house to the informant. At that time, it was told by the present applicant, after abusing the informant and Shaheen, that unless the amount is given, he will not allow Shaheen to cohabit. After the quarrel, the present applicant took Shaheen

along with him without even taking lunch. Thereafter, on 24.9.2020 at about 4.30 pm, the informant received phone call from Shakeel, informing that Shaheen has gone missing since 2.00 pm. Then the informant along with his family members went to the house of the applicant and made enquiry, whereupon it was revealed that the applicant had lodged missing report. The informant states that he gave phone call to the mobile, which Shaheen was using, on 2.10.2020 at about 12.40 pm. At that time, mobile call was picked and Police Patil from Bhortek and Bhadgaon police, informed that the said mobile was found near the well in village Bhortek area and a lady, aged around 25, was found in the well. Police called the informant and, therefore, they went to the said well. He identified dead body of Shaheen. After inquest and post mortem, the dead body was given to the informant and then last rites were performed. He has then lodged the report.

5. Now, the investigation is over and charge sheet is filed. No doubt, earlier bail application filed by the present applicant, i.e. Bail Application No.1456/2020, was dismissed as withdrawn by him on 21.12.2020, it is to be noted from the order that the said Bail Application was moved prior to filing of charge sheet. After the charge sheet has been filed, he had again approached the same Court, however, his application under Section 439 of Cr.P.C. has been rejected and hence he is before this Court.

6. When the charge sheet is filed, further physical custody of the applicant is not required for the purposes of investigation. But then we are required to consider as to what is the evidence on record against the applicant. The statements of the witnesses, who are the relatives of the deceased, would show that they are stating about the alleged ill-treatment by the present applicant on account of deceased not begetting any child and the alleged illegal demand of rupees two lacs for construction of house. It will not be out of place to mention here that the present applicant has come with a specific case and it also appears from the statements of certain witnesses that the applicant is having a son viz. Jeshan. The informant, who has filed the application to assist APP, has not denied this aspect and, therefore, it is very much certain that the harassment to the deceased could not have been on the point of not begetting any child. No doubt, it appears from the statement of the present applicant that said son is now around 1½ to 2 years of age. Therefore, even if we try to consider that the alleged harassment on account of not begetting any child was prior to the birth of son Jeshan; yet that reason cannot be said to be soon prior to the death of deceased. In other words, there appears to be no proximity between the alleged harassment on the count of not begetting any child and death of Shaheen.

7. Now, as regards the other allegation is

concerned, it is stated that the present applicant was harassing the deceased on account of demand of rupees two lacs for the purpose of construction the house. The informant has also stated about the incident that had taken place at the time of the engagement ceremony of his another daughter on 23.6.2020. However, again here it is to be noted that from that date till the date, on which deceased Shaheen went missing, there is gap of about three months. It is stated that she went missing on 24.9.2020 and thereafter the parents were making enquiry about missing report; yet on 2.10.2020, the informant had given a phone call on the mobile, which deceased Shaheen was using. Important point to be noted is that none of the witnesses has stated that from 24.9.2020 till 2.10.2020, they were also giving a call on the said mobile which deceased was using. If we consider the post mortem report, in Column No.17 in respect of Surface wound, it is stated that there is no external injury. However, there were white patches and at some places, skin had got dots. The probable cause of death is "drowning". Here the prosecution has not come with a case of suicide and also not of murder. The prosecution will have to rule out the possibility of accidental death and it is also to be noted that the death is not in the house of the applicant so as to infer custodial death. If we also consider the spot panchanama, where the dead body was found, it says that it is the well in the field of one Mangalabai Amrutkar from village Bhortek. The well was having 18 ft.

diameter; 35 ft. depth having 20 ft. water in it. The police found footwear (*Chappal*) and mobile as well as bus ticket and cash of Rs.150/-. Interesting point to be noted is that the post mortem report does not indicate the probable time of death and taking into consideration the fact that the deceased went missing on 24.9.2020, but found on 2.10.2020, it is hard to believe that owner of the well would not have gone towards the well during this period. Another fact also requires to be considered is that the mobile which was found is of NOKIA company. Whether battery of the said mobile would have sustained all these days is also a question. Therefore, taking into consideration all these question marks, the applicant deserves to be released on bail. Hence, following order,

ORDER

- i. The Bail Application stands allowed.
- ii. The applicant be released on bail in connection with CR No.262/2020 registered with Bhadgaon police station, for the offences punishable under Sections 304-B and 498A of IPC. on PR bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.
- iii. The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

iv. The applicant shall comply with the requirements set out in Para 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