

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.379 OF 2021

Ganesh s/o Laxman Aaglave

... Applicant

Versus

The State of Maharashtra

... Respondent

...

Mr. S. V. Suryawanshi, Advocate for the applicant.

Mr. N. T. Bhagat, APP for the respondent – State.

...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 04.05.2021

Pronounced on : 08.06.2021

ORDER :-

1. Present applicant, who is the husband of deceased Durga, has been arrested by Hingoli Rural Police Station in connection with Crime No.377 of 2020 for the offence punishable under Sections 498A, 304B, 323 read with 34 of Indian Penal Code. He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. S. V. Suryawanshi for the applicant and learned APP Mr. N. T. Bhagat for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that his mother-in-law appears to have lodged the First Information Report due to the sudden accidental death of her daughter. In fact, the married

life of Durga and applicant was going on smoothly. There was no illegal demand or harassment to the deceased as stated. The marriage took place after the approval from both sides and it was an arranged marriage. Therefore, there is no substance in the contention raised that deceased was harassed on account of colour of her skin. It is alleged that the amount of Rs.3,00,000/- was demanded for construction of house. In fact, the applicant has his own house since beginning. Perusal of FIR would show that only words like mental and physical harassment was given are used without giving any details of the same. No evidence has been given to support the allegations that informant had raised amount of Rs.50,000/- by giving her ornaments. Present applicant had also participated in the search of the deceased. Her dead body was found in the canal. Possibility of accidental death cannot be ruled out. The investigation is over and charge-sheet is filed. It would take long time to stand his trial, therefore, he be released on bail.

4. Per contra, learned APP strongly opposed the application and submitted that Durga expired within three months of her marriage. Marriage took place on 07.07.2020 and she was found dead in the canal on 23.10.2020. It was unnatural death. She could not have gone to that place near canal for any purpose. The circumstances leading to her death will have to be explained by present applicant. Informant has

clearly stated that she had given cash/dowry of Rs.2,00,000/- and articles worth Rs.1,00,000/- to the applicant at the time of marriage. The harassment started only after 10-15 days on the count that why the marriage was not performed in a grand way? Another reason was that less dowry has been given. She was harassed by saying that she has dark complexion and she is unable to do any work. Demand for Rs.3,00,000/- started. Though the informant tried to persuade, but it appears to be in vain. Informant also says that on 25.09.2020, she had given 5 gm. gold ring and cloths to applicant, when he and his family members were called for the custom of *Dhonda*. Present applicant and his parents insisted that the amount be given to them immediately and therefore, she had arranged for Rs.50,000/-. She promised to pay remaining in the month of Diwali. In spite of it, it appears that the harassment continued. Durga had given phone call to mother on 22.10.2020 and after disclosing the harassment, she told that she should be taken back immediately. Informant promised to bring her after 2-3 days, but that period was not made available to her. On the next day itself her dead body was found. Applicant appears to be a greedy person. When his wife has been found dead in unnatural circumstance within a period of three months, those circumstances will have to be considered. He deserves no sympathy. The offence is against the society

at large. If he is released on bail, then it will give wrong message to the society.

5. At the outset, it can be seen that the investigation appears to be over and charge-sheet is filed. Further physical custody of the applicant is not required for the purpose investigation. Under these facts, we are required to consider as to what evidence has been collected by the investigating agency against the present applicant. We cannot forget the fact that present applicant is the husband of the deceased Durga, to whom he might be the dear and near one in her matrimonial home. It appears to be very unfortunate that within three months of her marriage, Durga expired under unnatural circumstance. The fact to be noted is that her dead body was found in canal, which does not appear to be near to her matrimonial home. Though, at this stage, it is not expected that the present applicant should disclose his defence, but still he has not given any such circumstance which would connect it to the death of Durga, his own reason as to how she would have expired. The spot panchnama does not disclose that Durga had gone to the canal to wash clothes. It is not even the circumstance put forward by present applicant. There are no such marks noted on the bank of the canal which would indicate that Durga would have fallen by slip. No doubt there are no injury marks on her body. Therefore, we will have to

restrict at this stage only to the fact of unnatural death of Durga and the present situation that applicant has not explained those circumstances leading her death.

6. Now as regards the demand of Rs.3,00,000/- is concerned, it was tried to be submitted on behalf of applicant that since it was neither agreed nor promised at the time of marriage, it will not be covered under definition of 'dowry' under Dowry Prohibition Act. Important point is that Section 498A of Indian Penal Code covers 'illegal demands' and it need not be restricted to 'dowry' defined in Dowry Prohibition Act. Informant was confident in saying that she had given Rs.2,00,000/- at the time of marriage. Still within few days, there was demand of Rs.300,000/- for the purpose of construction of house. Now, even if applicant might be having one house, that does not mean that he could not have demanded the amount under that head. Further, the demand was directly with her by the present applicant at the time of *Dhonda* festival. She says that she had raised Rs.50,000/- and gave it to applicant at that time. There is oral evidence about raising of such amount by her by selling ornaments.

7. Thus, taking into consideration the fact that Durga dies under unnatural circumstance within three months of her marriage and oral evidence collected about demand of Rs.3,00,000/- and disclosure by

Durga about harassment given to her; there appears to be *prima facie* evidence against present applicant for the offence punishable under Sections 498A, 304B of Indian Penal Code. Hence, no case is made out to exercise discretion in favour of applicant. Application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm