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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.997 OF 2021
IN
CRIMINAL APPEAL NO.233 OF 2021

1. Rameshwar @ Ramesh s/o Dattu
Pachpute and Ors. = APPLICANTS

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.JV Deshpande and Mr. SN Dudhate, Advocates for
Applicant/s;

Mr.SB Narwade,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 06/05/2021

PRONOUNCED ON : 08/06/2021

PER COURT :-

1. Heard Advocates and learned APP,
appearing for the respective parties.

2. In this Criminal Application, the
applicants pray for suspension of substantive
sentences and releasing them on bail during
pendency and final hearing of the Criminal Appeal.

3. The applicants are original accused Nos.1
to 3 in Sessions Case No.29/2014, who have been
convicted and sentenced by learned Additional
Sessions Judge, Aurangabad, vide judgment and order

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dated 9.4.2021, thus -

a) For the offence punishable under Section 304(B) of IPC and sentenced to suffer R.I. for ten years and to pay fine of Rs.10,000/-, in default, S.I. for two months each;

b) For the offence punishable under Section 306 of IPC and sentenced to suffer R.I. for seven years and to pay fine of Rs.5,000/-, in default, S.I. for one month each;

c) For the offence punishable under Section 498A of IPC and sentenced to suffer R.I. for one year and to pay fine of Rs.5,000/-, in default, S.I. for one month each; and

d) For the offence punishable under Sections 3 and 4 of Dowry Prohibition Act and sentenced to suffer R.I. for five years and to pay fine of Rs.15,000/-, in default, S.I. for two months.

. All the sentences are ordered to run concurrently.

4. It is vehemently submitted on behalf of the applicants that the applicants were on bail throughout the trial. The witnesses admitted about no demand of dowry and there was no agreement in respect of it, which is material ingredient for the offence under Section 304(B) of IPC. The demand, as alleged and stated by PW 1 - Nivrutti, was not

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relating to any demand for dowry. There is no evidence by PW 1 that soon before death of deceased Rani, she was subjected to cruelty. On the contrary, he has nowhere disclosed about the specific incident of cruelty or harassment subjected to the deceased. The testimonies of PW Nos.1 to 3 are inconsistent to each other in respect of ill-treatment and alleged demand. In absence of any ill-treatment, presumption under Section 113-B of the Indian Evidence Act, is not applicable as to the evidence brought by the prosecution. There is no cogent evidence to prove the ill-treatment to the deceased and, therefore, the presumption is not applicable. The learned Sessions Judge has misread and misconstrued the evidence brought on record and erred in convicting and sentencing the applicants. The prosecution has utterly failed to prove the charges levelled against the applicant/s by a cogent and reliable evidence on record and the conviction is not sustainable in law and facts of the case. The learned Advocate further submits that the appeal involves other legal points/issues, which the applicants/appellants intend to agitate and address them at the time of final hearing of the appeal and they have every hope of success in the appeal. Consequently, the applicants pray for releasing them on bail by suspending the substantive sentence awarded by the learned Sessions Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP strongly resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentences against the applicants. The prosecution duly proved that soon before the death of deceased Rani, she was subjected to the cruelty for demand of dowry. The learned Sessions Judge has properly scanned and scrutinized the evidence brought on record and no interference is required. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

6. At the outset, it is to be noted that, as aforesaid, the present applicants are the original accused Nos.1 to 3, who are the husband and parents-in-law of deceased Rani. Rani and present applicant No.1 – Rameshwar got married on 6.5.2013 and Rani died in unnatural circumstance on 13.9.2013. That means, within four months after her marriage. It is to be noted that her dead body was found in the well. It has come in the evidence of PW 1 – Nivrutti, who is the informant/father of the deceased, that applicant No.1 used to stay at Aurangabad in connection with his job. However, Rani was staying with her parents-in-law, i.e. applicant Nos.2 and 3 at Jalgaon Mete Tq. Phulambri District Aurangabad. It is not his case that applicant No.1 used to go to and fro daily from Jalgaon Mete for his work to Aurangabad. But then, he says that at the time of Nagpanchami festival, when she had come to the informant's house, it was

told by her that applicant No.1 is ready to take her to Aurangabad, but applicant No.2 – father-in-law was not ready and he has evil-eye on her. Important point to be noted is that the informant has not expressed as to what course of action he had taken when such kind of disclosure was made by his daughter to him. Thereafter, he says that the accused persons were demanding an amount of Rs.2,00,000/- for opening of a cloth shop. He had promised that he would give the amount after harvesting of cotton crop. This promise was given around festival of Rakshabandhan and thereafter the informant had given a phone call to the deceased on 12.9.2013. He had corrected it later on that deceased Rani had given call to him, by concealing the fact from her husband, and then informed him about the alleged harassment to her. This is the evidence by the informant. PW 2 – Bhausahab is his brother and also appears that he was also taken as a panch to the spot panchanama. He says that the suicide note was recovered from the edge of the well and it was only stated in the said suicide note that father should pardon her (दादा मला माफ करा. तुमची लाडकी रानी). The question that arises, as to when she was able to write and she was in fact writing, why she could not have disclosed all the facts in the said suicide note itself. Thereafter there are other witnesses, who are the relatives of the deceased, who have been examined and they have stated on the same line as to how the deceased was allegedly harassed. However, there appears to be improvements made by

them in their testimonies.

7. From the impugned judgment, it appears that the presumption, under Section 113-B of the Indian Evidence Act, has been invoked by the learned Trial Judge. Prima facie, it can be said that unless the harassment would have been proved beyond reasonable doubt, question of raising the presumption will not arise. Post mortem report mentions six injuries on the person of the deceased. In the cross-examination, the Medical Officer (PW 6) Dr.Ninal has admitted that the injuries are possible by fall in the water and may also occur due to the accident. Therefore, with this kind of evidence, which has to be revisited, when the appeal is admitted, till the appeal is finally disposed of, it can be said that a case is definitely made out for releasing the applicants on bail by suspending the substantive sentence. Further, in view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, benefit will have to be extended to the applicants-appellants when they have demonstrated that the material and significant points raised by them in the appeal are required to be considered at the time of final hearing of the appeal. Further, the applicants were on bail during the trial, they have not misused their liberty. In view of the matter, it can be said that a case is definitely made out for releasing the applicants on bail by suspending the substantive sentence during pendency and final disposal of the appeal. Hence, following order,-

ORDER

i. The Criminal Application stands allowed.

ii. The substantive sentence imposed on the applicants by learned Sessions Judge, Aurangabad, in Sessions Case No. 29/2014, vide judgment and order dated 9.4.2021, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicants – 1) Rameshwar @ Ramesh s/o Dattu Pachpute; 2) Dattu s/o Rama Pachpute; and 3) Sau Bhimabai Dattu Pachpute, be released on their executing PR and SB of Rs.50,000/ (Rupees fifty thousand) with two sureties of Rs.25,000/- each.

iv. The applicants shall not commit any criminal activity.

v. The applicants shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date they tender bail papers and, thereafter, the Trial Judge to fix dates for their subsequent appearances.

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vi. In case of two consecutive defaults on the part of the applicants to remain present before the Sessions Court, the Sessions Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicants.

vii. Bail before the Sessions Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV