

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

ANTICIPATORY BAIL APPLICATION NO. 1214 OF 2021

1. Balasaheb @ Balu s/o Bhagunath Jadhav ... **Applicant**
Age 50 years, Occu: Private Service,
The Indian Seamless Metal Tubes Ltd.,
C-1, MIDC Industrial Area,
Ahmednagar, 414 111

2. Sunita Balasaheb Jadhav,
Age 44 years, Occu: Household

Both r/o 81, Mauli Niwas, Shingave Naik,
Tq. Nagar, Dist. Ahmednagar.

VERSUS

The State of Maharashtra, ... **Respondent**
Through The Inspector/Investigating
Officer in Crime No. 526/21,
MIDC Police Station, Ahmednagar

Mr. Abhaykumar D. Ostwal, Advocate for the applicants,
Mr. A. S. Shinde, A.P.P. for the State.
Mr. A. B. Jagtap, Advocate assists to PP.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd December, 2021

ORDER:

1. This is an application for anticipatory bail in Crime No. 526/2021, registered with MIDC Police Station, Ahmednagar for the offence under sections 306, 498A, 323, 506 r/w 34 of the Indian Penal Code (for short "IPC").

2. The First Information Report (for short "FIR") was registered on 9th August, 2021 by the father of the deceased. It is alleged that the

deceased (daughter of the complainant) was married to accused No.1 on 9th May, 2017. Child was born out of wedlock. After the marriage, the victim was ill-treated by the accused. There was demand of Rs. Five lakhs from accused for buying land. The complainant's daughter informed about it to her mother. Complainant visited house of accused and informed them that they are not in position to give such amount. On 28th July, 2021, the victim had visited the parents house and informed that her father-in-law wants to buy Car and demanding money. She returned to her matrimonial home on 02.08.2021. On 9th August, 2021, father-in-law gave call to cousin of complainant informing that victim had fallen in the well and she has been taken to hospital. The complainant and others visited Hospital. FIR was registered against husband, father-in-law and mother-in-law of the deceased.

3. Postmortem was conducted. Injuries were found on the body of deceased. Opinion as to cause of death was "Postmortem findings are consistent with that of death due to drowning." However viscera is preserved Investigating officer submitted a report before the Court of learned JMFC on 02..09.2021 stating that the medical certificates indicate that the victim was assaulted by the accused and she was harassed for dowry, hence, section 304(B) 324 IPC were added and general diary entry was made about invoking the aforesaid provisions on

31st August, 2021. On completing investigation charge-sheet has been filed against him.

4. Accused No.1 (Husband) was arrested on 10.08.2021. He was produced before the Court. He was remanded to custody.

5. The investigation proceeded. Supplementary statement of complainant was recorded on 27.09.2021. Statements of witnesses were recorded. On completing investigation, charge sheet is filed against accused No. 1 for the offences under sections 302, 304(B), 498A, 324, 323, 504, 506 read with 34 IPC. Charge sheet was filed against accused Nos. 2 and 3 (applicants) under section 299 Cr.P.C. by keeping open the option of further investigation under section 173 (8) Cr. P.C. and filing supplementary charge sheet. Section 306 IPC was deleted.

6. Learned counsel for the applicants urged several submissions in support his application which can be summarized as under:

The applicants are falsely implicated in this case. Allegations in the FIR are after thought. Husband of the victim has been arrested and he is in custody. The applicants are not involved in assaulting the victim. The applicant No.1 was on duty. Applicant No.2 was sleeping in her room. Both rooms are separate. There is no access from inside. There are different entries to the rooms occupied by the victim and the applicants. There was no previous complaints.

The applicant No.1 is employed with Indian Seamless Metal Tubes Ltd., situated at MIDC, Ahmednagar from 24.02.1997. On the date of alleged incident, the applicant No.1 was having his shift as skilled worker from 23.35 hours on 08.08.2021 to 06.35 hours on 09.08.2021. This is evident from Muster Roll issued by the Company for the month of August, 2021. The copy has been annexed to the application. The deceased was suffering from post-partum severe eclampsia alongwith cerebral venous sinus Thrombosis which caused seizures to her. The applicants were taking care of said illness. Discharge summary issued by Max Care Superspecialty Hospital refers to clinical history and findings viz. patient has Generalised tonic clonic seizures with tongue bite, having history of preterm induction delivery. History of severe pre-eclampsia, episodes of convulsion. The medical reports issued by Maxcare Superspeciality Hospital, Ahmednagar and other reports of treatments are annexed to the application. The applicant No.1 has undergone By Pass surgery on 29.05.2019. In 2006, he had undergone Angioplasty. There is no evidence to show that the victim was harassed, abused, assaulted or subjected to ill-treatment. Allegations in the FIR against the applicants are vague. Husband of the victim is in custody from the date of arrest. Investigation is already completed and charge sheet has been filed. Section 302 IPC is not attracted. The allegations of demand of dowry are false. In the circumstances, the applicants may not be subjected to custodial interrogation.

7. Learned APP submitted that the victim had died within seven years of marriage. There was demand of money. Body of the victim was found in the well. Postmortem report indicates that there were injuries on the body of the victim. This shows that the victim was assaulted by accused and thereafter thrown in the well. Section 304B and Section 302 IPC have been invoked. The offence is of serious nature. Opinion has been received from the medical officer with regard to injuries sustained by the victim which indicates that injuries are not caused due to fall in the well. All the accused are involved in causing ill-treatment to the victim. There was demand of dowry. The statements of witnesses support the case of prosecution. Supplementary statement of complainant was recorded. Plea of Alibi cannot be considered at this stage. Even if it is a case of drowning, homicide is not ruled out. No sympathy can be shown to accused.

8. Learned counsel for the complainant supported the submissions of learned APP. It is submitted that victim had died within short span after marriage. All the accused were involved in causing ill-treatment to the victim. The victim was killed and thrown in well. All the accused are residing in the same premises. There are internal doors in the house. Postmortem report and other documents support the prosecution case. Victim had disclosed ill-treatment caused to her by the accused to her parents. Injuries suffered by the victim are not possible due to fall in well. The opinion expressed by the Doctor

supports the prosecution case. Victim was thrown in the well after assault. Hence, the application may be rejected.

9. The applicants had preferred application for anticipatory bail before the Court of Sessions at Ahmednagar. It was rejected by order dated 03.09.2021.

10. I have perused the first information report and the documents produced by both sides including investigation papers. The applicants are father-in-law and mother-in-law of the deceased. The marriage was performed on 9th May, 017. Out of the wedlock, a child is born to them. Complainant is father of the deceased. It is alleged in the FIR that victim was harassed by the accused. There was demand of money. On 9th August, 2021, at about 7.30 a.m., call was received by the complainant's cousin from applicant No.1 that the victim fell into well and she has been taken to Hospital. Inquest panchanama was recorded and postmortem was conducted. FIR was registered under sections 306, 498-A, 323, 506, 34 IPC. Husband of deceased was arrested on 10.08.2021. Since then he is in custody. On the basis of opinion received from medical officer, District Civil Hospital, Ahmednagar dated 23.08.2021, Section 304(B), 324 IPC were added on 31.08.2021. Report in that regard was submitted to Court on 02.09.2021. Supplementary statement of complainant was recorded on 27.09.2021, after about one and half month from date of incident. It was stated that while deceased was at Hospital, he had seen injuries on her body.

Postmortem report shows injuries. The accused were residing in the same house. On 08.08.2021 after 12.00 hours the accused had assaulted deceased with some weapon/article and pushed her in well and she died by drowning in water. This is obviously based on inferences. Postmortem report indicates that there were some injuries on the body of the victim such as contusion on thigh, lateral aspect of right leg, contusion on anterior medial aspect of left leg and buttock, diffuse swelling. Opinion expressed in postmortem report indicates that death is due to drowning.

11. Contention of the learned counsel for the applicants is that injuries are caused due to fall in the well. By relying upon the photographs of the well, it was contended that there were stones fixed in the inner side of well which indicate that there is every possibility that while falling in the well or jumping in the well victim had sustained injuries. Prosecution is however relying upon the opinion sought subsequently from the Medical Officer on 13.08.2021, wherein queries were put forth by the investigating officer, whether injuries sustained by the victim were caused due to assault, period of injury, nature of weapon by which injuries were caused and nature of injuries simple/serious. The medical opinion was forwarded by the Medical Officer, District Civil Hospital, Ahmednagar mentioning that the injuries from 1 to 7 mentioned in Column No.17 of the Postmortem report can be caused by hard, blunt and flat object. These injuries are not possible

to be caused by accident or fall and are most probably to be caused by beating of a person with hard, blunt and flat object like bat or flat wooden surface of a wooden blade or board wooden rod. There was no query by the investigation officer, whether injuries are possible due to fall in well or accident. The report further mentions that opinion with regard to nature of injuries, whether they are simple or grievous cannot be given. Learned counsel for the applicants however submitted that the report is doubtful. Although it is mentioned that injuries are possible by hard and blunt object like bat, wooden surface of a wooden blade or wooden rod etc., there is no such evidence. There is no outward number on report. It is not perused by Civil Surgeon.

12. Although accused No.1 is in custody, there is no recovery of any weapons referred to herein. It is not that opinion on the basis of any weapons being shown. Investigation does not reveal case of assault in house, finding of weapons in house, blood stains in house or any incriminating circumstances in house or any other place to show that victim was assaulted.

13. During the course of investigation, statements of several persons were recorded. Reference can be made to the statements in the charge sheet filed against the arrested accused. Statements were recorded during the course of investigation. Statements of some of the neighbours were also recorded. Said neighbours have not referred to any dispute or quarrels between the parties. The statements of some

of the witnesses indicate that incident have occurred beyond midnight. Statements of some of the witnesses also mentions that on hearing commotion, they went to the place of incident and found that the body of the victim was floating in the well. Accused No.1 got into well to remove body. From the statements it does not appears that the applicants are involved in assaulting or causing her death. Initially FIR was registered under section 306 IPC. Subsequently, section 304B was added. While filing charge sheet section 302 IPC was invoked. Husband is already in custody. There is no eye witness to the incident to show that victim was assaulted and thrown in the well. The case is based on circumstantial evidence.

14. Considering the aforesaid circumstances, I pass the following order :-

ORDER

- i. Anticipatory Bail Application No. 1214 of 2021 is allowed;
- ii. In the event of arrest of the applicants in Crime No. 526/2021, registered with MIDC Police Station, Ahmednagar, the applicants be released on bail on executing PR bond in the sum of Rs. 25,000/- each, with one or more sureties in the like amount;
- iii. The applicants shall report the investigating officer from 6th December, 2021 to 10th December, 2021 between 11.00 a.m. to

1.00 noon and thereafter as and when called for till filing of the charge sheet.

- iv. Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

JPC