

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 431 OF 2020

Nitin Waman Kamble	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Amol B. Jagtap for Applicant.
Smt. A. A. Takalkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 28th JUNE, 2021
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 659 of 2019 registered at Bharti Vidyapeeth police station, Pune, under sections 306 and 498A of the Indian Penal Code (for short 'IPC'). The applicant was arrested on 21/10/2019 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri. Amol Jagtap, learned counsel for the applicant and Smt. Takalkar, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is

lodged by one Meera Asware who was mother of the deceased Vijaya. She has stated that, Vijaya had got married with the present applicant on 09/12/2000. They had a son from their marriage. There are allegations in the F.I.R. that the applicant was not treating her well. He was abusing her and even used to give cigarette burns. The applicant had illicit affairs and used to harass her physically. The deceased wanted divorce from him. In 2002 the applicant had allegedly beaten her and had demanded money from her parental house. According to the first informant, at that time he was paid Rs.1 lakh. The deceased had filed a petition in the family court in the year 2002, but the applicant had convinced her to withdraw it. They were residing together. The F.I.R. mentions that, son of the deceased had also fallen for vices and was addicted to liquor. It is alleged that the applicant had forced the deceased to drink poisonous substance about six months prior to F.I.R. It is mentioned that, in the previous month of the incident he had beaten the deceased. On 20/10/2019 the deceased consumed poison used for killing rats and had succumbed to the effect of that poison. On this basis the F.I.R. is lodged.

4. Learned counsel for the applicant submitted that the couple had got married in the year 2000 and after about 19 years the deceased had consumed poison. Therefore, there could not be any allegation of constant harassment at the hands of present applicant. He submitted that, no particular overt act is attributed against the applicant. He submitted that the F.I.R. is lodged on the basis of suspicion. The informant's relatives and some of the neighbours are also making false allegations based on suspicion and anger. He submitted that the applicant is already in custody for over a long period and, therefore, the applicant deserves to be released on bail. He submitted that, there is dying declaration recorded by the police and the deceased had not blamed the applicant in that dying declaration.

5. Learned APP opposed this application and has relied on the statements of witnesses including neighbours and other family members of the deceased. She submitted that the applicant had not accompanied the deceased to the hospital which shows his intention not to help the deceased.

6. I have considered these submissions and with the

assistance of both learned counsel I have perused entire charge-sheet. The important circumstance in this case is dying declaration recorded by police constable attached to Bharti Vidyapeeth police station. The dying declaration given by the deceased mentions that, on 19/10/2019 she was under mental tension because of domestic reason and she consumed the powder use for killing rats. She was taken to Health Care Hospital near her house and thereafter her husband had taken her to Vighnaharta hospital on 20/10/2019 at about 2:00a.m. and that she had no complaint against anybody. This dying declaration describes two things; first of all that she had consumed poison because of domestic tension. She has not squarely and specifically attributed any role to the present applicant. Secondly, this dying declaration shows that the applicant herself had taken her to Vighnaharta hospital. This indicates that the applicants had made some efforts to save her.

7. The F.I.R. itself mentions that the son of the deceased had fallen for vices which also was a possible factor for her disturbed mental state. The statement of the applicant's son Vinit is recorded. He has stated that on 18/10/2019, there was quarrel

between the applicant and the deceased. The quarrel had started because Vineet had returned home late. Thus, this quarrel had nothing to do with the problems inter-se between the couple, but it was because of their son's behaviour.

8. There is a statement of one Pramila. It is slightly incriminating against the present applicant. It mentions abuses given by the applicant to the deceased on 19/10/2019. There are similar allegations made by relatives of the deceased. Though there are serious allegations made by these relatives. They are spoken about their relationship from the period 2000. Their statements also do not show as to when the deceased had told these witnesses about this harassment. There is another set of witnesses i.e. relatives of the applicant i.e. his sisters in law Rekha and Shakuntala. They had taken the deceased to the nearest hospital at the first instance and thereafter she was taken to Vighnaharta hospital. They have not really spoken about the reason why the deceased had consumed poison.

9. Dr. Swapnil Pawar of Health Care hospital near the house of deceased has stated that the deceased had not told him

about the reason for consuming this poison. Thus, as discussed, there are allegations against the present applicant. At the same time, there are certain factors in his favour. However, applicant's guilt or innocence can be decided only at the conclusion of the trial. The trial is likely to take a long time, even to commence. The applicant is in custody since 21/10/2019. The investigation is already over and his further custody will not serve any purpose. The applicant does not have criminal antecedents. In this view of the matter, the applicant can be granted bail.

10. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 659 of 2019 registered at Bharti Vidyapeeth police station, Pune, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)