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

BAIL APPLICATION NO. 2807 OF 2021

Jayant Sanjay Watharkar ...Applicant

Versus

The State of Maharashtra ...Respondent

.....
Mr. Varun Thokal for the Applicant.

Mr. A.A.Palkar, APP for the Respondent –State.

.....
CORAM : V.G.BISHT, J.
RESERVED ON : 26TH NOVEMBER, 2021
PRONOUNCED ON : 10TH DECEMBER, 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.207 of 2020 registered with Gandhinagar Police Station, Kolhapur for offence punishable under Section 302 of the Indian Penal Code (the IPC).

2. The informant is the mother of deceased Pallavi, who was married to applicant before three years. It was a love

marriage. It is alleged that the applicant was in habit of harassing the deceased mentally and physically. On 24th May, 2020 at about 3.30 a.m., informant's elder daughter and her husband came crying and informed her that the applicant had called them informing that something had happened to deceased. Therefore, informant and others rushed to the house of applicant and got the deceased checked by Dr. Bagadi, who advised them to immediately take her to Janaki Hospital, Rajarampuri. The deceased was then immediately moved to the said hospital where she was declared dead. Informant accordingly lodged the report.

3. Mr. Thokal, learned Counsel for the applicant, submits that the case of prosecution is based on circumstantial evidence. Learned counsel invited my attention to the postmortem report showing that cause of death was "asphyxia due to throttling". Thus, according to learned Counsel, the postmortem report does not show any sign of the injury on the dead body of the deceased. No specific role is attributed.

Investigation is completed. There are no criminal antecedents. In such circumstances, the applicant deserves to be enlarged on bail.

4. Mr. Palkar, learned APP, on the other hand, submits that the deceased was in the company of the applicant and since this fact was especially within the knowledge of applicant, the burden lies on him under Section 106 of the Evidence Act as to under what circumstances his wife died. According to learned APP, circumstances are clearly in favour of the prosecution. There being no merit in the application, the same is liable to be rejected.

5. At the very outset, it may be noted and which is not disputed that on the day of incident, the applicant, his daughter, who was hardly three years old, and the deceased were only occupants of the house where the incident took place and on the next morning deceased was found dead. In such circumstances, the applicant, who along with her three

years old daughter was present, he alone knew what exactly had happened. It was therefore incumbent on the applicant to have tendered some explanation in order to avoid any suspicion as to his guilt.

6. In this regard, it is relevant to note the findings of the postmortem report. The opinion given as to the cause of death is “evidence of neck muscle haemorrhage however opinion is kept pending for viscera and histopathological examination reports”. The above said postmortem report is dated 24th May, 2020. However, final opinion as per death certificate dated 29th July, 2020 is that the cause of death was “asphyxia due to throttling (homicidal)”. It is evident that the deceased was throttled to death.

7. At the cost of repetition, I may point out that since the applicant alone was in the company of deceased along with her said daughter, the burden of proof rested upon him to prove what had happened thereafter since those facts were

within his specific knowledge. In the absence of any explanation much less plausible explanation, I hold that the applicant has failed to discharge the burden cast upon him by Section 106 of the Evidence Act.

8. Having regard to the material on record and as discussed herein above, I am not inclined to allow the application. Hence, the following order :

ORDER

The bail application is rejected.

(V.G.BISHT, J.)