

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

ANTICIPATORY BAIL APPLICATION NO. 1849/2021

Shayar Laxman Khawaliya**Applicant**

V/s.

The State of Maharashtra
(At the instance of Vishnu
Nagar Police Stn.)**Respondent**

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Miss. Gulestan M. Dubash a/w. Mr. Aniruddh More i/by.
Mr. Durgesh P. Jaiswal, Advocate for the applicant.

Mr. H.J. Dedhia, APP for State- respondent.

API, Mr. Mahesh D. Jadhav from Vishnu Nagar Police
Station, present.

CORAM : SANDEEP K. SHINDE, J.

10th August, 2021.

P.C. :

1. Heard learned Counsel for the applicant and
learned APP for State.

2. Apprehending arrest in connection with Crime
No.139/2021 registered at Vishnu Nagar Police Station,
Dombivali for the offences punishable under Sections

498A, 306 of the Indian Penal Code, the applicant seeks pre-arrest bail.

3. Prosecution case is that, Varsha (deceased) married to applicant in May, 2003. Out of the wedlock, Komal and Kabir were born. It appears, since 2014, the temperaments of the couple seldom matched. As a consequence, in December 2015, Varsha (wife of the applicant) withdrew herself from the company of her husband and started living at her parent's house. In 2020, applicant's wife instituted a petition for dissolution of marriage. In para-4, deceased had alleged that, her husband had extra-marital affairs with a lady. Be that as it may, Varsha committed suicide at her parent's house on 22nd April, 2021. Her cause of death is not in dispute. Although, she committed suicide on 22nd April, 2021, her brother lodged the complaint on 29th June, 2021. Prosecution claims that, complaint was not lodged soon after the incident because suicide note left behind by Varsha was traced in June, 2021. On a report filed by Varsha's brother, the crime in question came to be registered against the applicant.

4. The learned Counsel for the applicant, has drawn my attention to a letter/complaint filed by the applicant on 22nd April, 2021 at Vishnu Nagar Police Station, Dombivali. This complaint, suggest the applicant was suspecting character of the deceased and would refer to several incidents pointing out extra-marital relations of the deceased with Mr.X. Alongwith the complaint, applicant had also submitted deceased's photographs with Mr.X and an application seeking registration of marriage with Mr.X. Submission is that, it is after the applicant made grievances to the Vishnu Nagar Police Station on 27th April, 2021 as a counterblast, the complaint was lodged on 29th June, 2021.

5. The complaint dated 27th April, 2021 filed by the applicant with Vishnu Nagar Police Station and the photographs placed on record from pages-38 to 21, suggest, the deceased's intimacy with Mr.X, which apparently the applicant was not approving. May be for this reason, the deceased withdrew herself from the company of the applicant.

7. That even otherwise, the deceased was living at her parent's house for more than five years before the incident. The allegations in the complaint that, applicant

was recurringly harassing her on telephone, do not *prima-facie* satisfy the ingredients of Section 107 of the Indian Penal Code. It is settled law that, offending action ought to be proximate to the time of occurrence. The circumstances on record, do not suggest that, owing to constant humiliation or ill-treatment meted out to Varsha by the applicant, she was left with no option but to commit suicide.

8. In consideration of the facts of the case and for the reasons stated above, in my view, the custodial interrogation of the applicant may not further the prosecution's case.

9. For the reasons stated, the applicant is granted.
Hence, the order :

ORDER

(i) In the event of arrest of the applicant in Crime No. 139/2021 registered at Vishnu Nagar Police Station, Dombivali, he shall be released on bail on executing P.R. bond for the sum of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or more sureties in the like sum.

(ii) The applicant shall report to the Investigating Officer on 16th, 20th, 23rd and 27th August, 2021 and thereafter as and when called and co-operate in the investigation.

(iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

10. The application is accordingly allowed and disposed off in the above terms.

11. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.