

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

CRIMINAL APPLICATION NO. 540 OF 2017

Mangilal Simaramji Malviya ..Applicant

v/s.

The State of Maharashtra & Anr. ..Respondent/s

Ms. Janaki Ravi i/b. Subhash Hulyalkar for the Applicant .
Mr. S.V.Gavand, APP for the Respondent-State.
Mr. P.R.Arjunwadkar, for the Respondent No.2.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 27th OCTOBER, 2021.**

P.C.

1. This is an Application under Section 439(2) of Cr.P.C. filed by the Applicant for cancellation of bail granted to the Respondent vide Order dated 05.08.2017 in Criminal Bail Application No. 1867 of 2017.
2. Heard Ms. Janki Ravi, learned Counsel for the Applicant, Mr. Gavand, learned APP for the State and Mr. Arjunwadkar, learned Counsel for the Respondent No.2. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

3. The records indicate that Shobha, daughter of the Appellant was married to the Respondent No.2 on 13.07.2016. She died an unnatural death on 11.11.2016. The Applicant lodged the First Information Report alleging that the Respondent NO.2 had demanded dowry and had subjected his daughter Shobha to cruelty. The Applicant alleged that the Respondent No.2 had abetted the suicide. Pursuant to the FIR lodged by the Applicant, Crime No.394 of 2016 came to be registered against the Respondent No.2 with Navghar Police Station, Thane, for the offences under Section 306, 498A, 504 r/w. 34 of the Indian Penal Code.

4. The Respondent No.2 was arrested on 13.11.2016. The first bail application came to be rejected on 12.01.2017, the second bail application filed after filing of the chargesheet was rejected on 4.3.2017. The Respondent No.2 filed third application, which came to be allowed on 5.8.2017. The Applicant has sought cancellation of this order of bail mainly on the ground that there was no change in circumstance. It is also alleged that the Respondent No.2 has not abetted suicide but has committed murder of the deceased Shobha.

5. It is to be noted that the first bail application was filed immediately after the arrest. The said Application was filed while the investigation was still in progress. The learned Judge has observed that the cause of death was yet to be ascertained. While rejecting the second bail application, the learned Judge had observed that the death of the deceased was unnatural. Though the post-mortem report mentions that there was evidence of ligature mark on the neck, final opinion was reserved and pending for autopsy examination report. The third bail application was filed after receipt of final opinion. The learned Judge has observed that the material on record prima facie indicates that it was a case of suicide and not murder. It is also to be noted that the statement of Ajay Kumar was not annexed to the chargesheet when the previous bail applications were filed. The learned Judge therefore had no occasion to refer to and rely upon the said statement while deciding the previous application. In view of the above, it cannot be said that the order was passed without there being any change in circumstance.

6. While releasing the Respondent No.2 on bail, the learned Judge observed that the Respondent NO.2 was in custody since

3.11.2016 and that no purpose would be served by detaining him indefinitely when the statements of all material witnesses were recorded, and the investigation was completed. The learned Judge observed that there was no possibility of the Respondent No.2 tampering with the evidence. The order of bail dated 5.8.2017 therefore cannot be considered as perverse order. The Respondent NO.2 is on bail since 28.8.2017. He has not misused his liberty. The Applicant has thus not made out a case for cancellation of bail. Hence the Application is dismissed.

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(ANUJA PRABHUDESSAI, J.)