

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 492/2021

(Rahul Samadhan Pawar Vs. State of Maharashtra)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R. D. Karode, Advocate for applicant.
Shri A. M. Kadukar, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATE : 21.09. 2021.

Heard.

2. Registration of crime No. 544/2021 with the Police Station Jalgaon (Jamod), District Buldhana for the offence punishable under Sections 304-B, 323, 504 and 506 of the Indian Penal Code led the applicant to approach this Court for grant of pre-arrest bail. Besides usual grounds, it is canvassed that the applicant was already married long back with a lady namely Sujata. Due to matrimonial dispute, proceedings are pending in between them in the Civil Court, which are pertaining to restitution of conjugal rights and claim for maintenance. On that basis, it is argued that though it is alleged that deceased got

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married with the applicant, however due to subsistence of applicant's first marriage, it has no legal status. According to learned counsel for the applicant, the applicant cannot be termed as 'husband' which would fall outside the pale of Section 304-B of the Indian Penal Code. Moreover, it is submitted that the applicant is serving in Arm Forces and he would abide by all the conditions. As against this, the State resisted bail by filing affidavit-reply. It is contended that the applicant got married with the deceased on 17.05.2019. Thereafter, both of them were living together at applicant's working place in Jammu. During co-habitation, applicant harassed deceased to meet dowry demand. Finally by getting rid of the harassment, deceased committed suicide by way of hanging. According to the State, since it is a case of dowry death the offence being of serious nature it requires thorough investigation.

3. At the instance of report lodged by the mother of deceased, crime was registered. Informant stated that her daughter got married with the applicant on 17.05.2019. For initial period of two years, the

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applicant treated deceased well but thereafter, started to harass. The informant stated that while her daughter (deceased) was living with the applicant at Jammu, she telephonically informed about the dowry demand of Rs. 1,00,000/-. She also stated that deceased became pregnant during matrimonial relationship, but she was aborted. The informant stated that on various occasion that deceased was informing her about the dowry demand and consequential harassment. Finally, on 01.07.2021 deceased committed suicide due to harassment.

4. Preliminary plea of the applicant is of total denial, including denial of his matrimonial relationship with deceased. Learned counsel for the applicant would submit that the applicant cannot be prosecuted for the offence punishable under Section 304-B of the Indian Penal Code in view of statutory requirement that the woman must be subjected to cruelty by her “husband” or “relatives of her husband” for demand of dowry. He would submit that the applicant cannot be termed as “husband” of deceased lady since there was no legal relationship in between them. In other words, he would submit that as the applicant was already

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married with one Sunita, the subsequent marriage, if any, has no legal status and therefore, he cannot be charged for the offence of dowry death. In support of said contention, he relied on several decisions of the Supreme Court and different high Courts. On the other hand, learned Additional Public Prosecutor also relied on the decision of the Supreme Court in Criminal Appeal No. 867/2009 (Koppiseti Subbharao @ Subramaniam Vs. State of A.P.) decided on 29.04.2009 wherein, it is ruled that apart from legality of the marriage for the purpose of Sections 498-A and 304-B of the Indian Penal Code, person can be charged in view of object of legislation. I have gone through all the cited decisions, however considering the limited scope of bail application, I do not wish to venture into said exercise. The appropriate Court in case of claim of discharge or in quashing proceedings, the said issue would be dealt appropriately.

5. Learned counsel for the applicant would submit that the informant herself has admitted in report that there is no proof of marriage of applicant with deceased. Perusal of case diary indicates that there are various statements to show that they got

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marriage and deceased was living with the applicant as husband and wife. The degree of proof requires to prove marriage for the purpose of Section 304-B of the Indian Penal Code is not as stringent as in claim of civil rights. It is to be noted that the Court proceedings in between the applicant and his wife Sunita were going on since the year 2015. On such background, one cannot expect the strict proof of marriage which was performed incontrovertion with the provisions of law. Always in such a situation, it was the general propensity to have clandestine marriage to escape from the clutches of law. At this juncture, statement of informant and witnesses about the marriage can be taken as it stand.

6. There are allegations of harassment and consequently suicidal death. The aspect of abetting deceased to commit suicide may also surface during the course of investigation. There are various areas like applicant's marriage with deceased, their cohabitation, pregnancy of deceased and the dowry demand for which there is need of custodial interrogation. The alleged offence is of serious nature

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which attracts punishment which may extend to the imprisonment for life. The investigation is at preliminary stage. A lady has lost her life, therefore, Investigating Agency must get free hand to investigate for reaching to the truth.

7. In view of above, this is not a fit case to grant pre-arrest protection, hence application stands rejected.

Latter on:-

8. At this juncture, learned counsel for the applicant seeks to extend the interim relief for the period of two weeks for enabling him to approach to the Hon'ble Supreme Court. Already, interim relief was granted and is in existence till today. In view of that, interim relief is extended for two weeks from today.

JUDGE

Gohane.