

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**25 BAIL APPLICATION NO.58 OF 2022
WITH APPLN/672/2022**

**UMESH KISAN BORADE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Jadhav Satej S.
APP for Respondents/State : Mr. A.V. Deshmukh
Advocate for Informant/Appln/672/22 : Mr. Sanjay Kotkar

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**CORAM : M.G. SEWLIKAR, J.
DATE : 7th March, 2022**

PC.:-

Applicant is seeking bail in connection with Crime No. 725/2021 registered with Shrirampur City Police Station, District Ahmednagar under Section 304-B, 306, 498-A of the I.P.C.

2. Shorn of all details prosecution case is that informant is the father of Madhuri (since deceased). Her marriage with the applicant was solemnised on 22nd November, 2020.

3. After marriage applicant started demanding Rupees Five Lakhs for purchasing a flat. When this unlawful demand was communicated by Madhuri to the informant, the informant told Madhuri that he would make the

provision. It is further alleged that applicant used to lock her in a room. Madhuri had also told the informant about the extra marital relations with one Ketki and on that count applicant used to beat the deceased. Applicant used to ill-treat the deceased on account of non-fulfillment of his demand of money. On 21st October, 2021 at 9.00 pm Madhuri made a phone call to the wife of the informant in which she stated that applicant had beaten her and had abused her on account of non-fulfillment of demand and on account of extra marital affair. Mother of Madhuri assured her that on the next day she and informant would come with money to Shrirampur, the matrimonial place of Madhuri.

4. On 22nd October, 2021 at 8.30 pm informant learnt that Madhuri committed suicide by hanging. When dead body was shown to the informant he found wale marks on her hand, back and thighs. There was swelling on her ears as well. On these allegations he lodged the FIR on the same day.

5. Post mortem report indicates that deceased had hesitation cuts (incised wounds) 2 in numbers, 4 cm each, 1 cm apart parallel to each other over left forearm, horizontal 3 cm from left wrist tailing towards medial aspect is noted. Cause of death was death due to asphyxia due to hanging.

6. Learned counsel Shri Jadhav submits that there are WhatsApp

chats indicating that deceased had no grievance against the applicant. He submits that hesitation cuts as per Modi's jurisprudence are self inflicted injuries by the person committing suicide. He further submits that she committed suicide, mainly on account of the alleged extra marital relations of applicant with Ketki. He further submits that vague allegations of ill-treatment are made.

7. Learned APP Shri Deshmukh and Shri Kotkar learned counsel for the informant assisting the APP submit that deceased had injuries on her person. Whether they were self inflicted or they were caused by the applicant that will be decided only during the trial. They submit that evidence in the nature of statement of witnesses indicating that applicant had extra marital relations with Ketki and applicant had subjected the deceased to ill-treatment on account of non-fulfillment of unlawful demand. Therefore, they opposed application for bail.

8. As per Modi's jurisprudence of 27th edition edited by K. Kannan following observations are made:

“27.11.2.1 Hesitation (tentative) Cuts

Sometimes, there are two or more superficial and cuts at the commencement of the wound, when the suicidal person is still hesitating or nervous, and then makes a deep cut, after plucking up courage to destroy himself.

Suicidal wounds of the throat inflicted by a right-handed person

are usually high up in the neck and are directed obliquely from a higher to a lower level and from below the left ear to the right side under the chin, and shows tailing (tapering) at the point of withdrawal of the weapon, while homicidal wounds of the throat, when inflicted from the front by a right-handed person, are, as a rule horizontal and directed from right to left; but the reverse is the case if the assailant happens to be left-handed. Again, a homicidal wound on the throat may resemble a suicidal one, if the assailant has inflicted it from behind the victim or by standing on the right when the victim is lying. It is difficult to decide in the case of ambidextrous person, who can use both hands.

The differences between suicidal and homicidal cuts are as follows:

Suicidal or Self-inflicted	Homicidal
Accessible and elective anatomical sites like wrist or neck	Anywhere in the body
Multiple, linear, parallel cuts	Their position and shape vary
Usually incised stab wound	Usually chop wounds. Stabs and lacerations may also be present
They are superficial at the commencement and end is deeper	They are deeper at the commencement and end is superficial
In right handed persons from left to right and from above downwards	Any direction
Defence or protection cuts absent	Defence or protection cuts present usually over the ulnar border of forearm

8. These hesitation wounds, therefore, appear to be self inflicted wounds while committing suicide by a person. So far as extra marital affair is concerned the Hon'ble Supreme Court has held in the case of **K.V. Prakash**

Babu V/s. State of Karnataka reported in **(2017) 11 Supreme Court Cases 176**

that simply extra marital affair cannot constitute abetment to commit suicide.

It has been held by the Hon'ble Supreme Court as under:

“15. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. It is difficult to generalize but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.”

9. So far as unlawful demand is concerned vague allegation is made in that respect. No specific dates nor specific incidents are quoted. There are statements of witnesses and they also make vague allegations in this respect. Admittedly, at some point of time deceased-Madhuri has stated in her chat that she wanted the applicant but her grievance was that he takes her for

granted. He is supportive and friendly but he has bad temperament. Having considered the entire evidence and considering the punishment provided for the offence which is not punishable with death or imprisonment for life and as applicant has no criminal antecedents and there is no likelihood of him fleeing from justice, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.25,000/- with one solvent surety in the like amount, in connection with Crime No.725/2021 under Section 304-B, 306, 498-A of the I.P.C. with Shrirampur City Police Station, District Ahmednagar .
- III) Application for assist to APP is also disposed of.
- IV) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]