

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

29 BAIL APPLICATION NO.104 OF 2022

1. Amit s/o Mohan Patil
2. Mohan s/o Janardhan Patil ...Applicants

Versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 315 OF 2022
IN BAIL APPLICATION NO.104 OF 2022

Vasant Rameshwar Chavan ...Applicant

Versus

1. Amit s/o Mohan Patil
2. Mohan s/o Janardhan Patil
3. The State of MaharashtraRespondents

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Advocate for Applicants : Shri R. S. Deshmukh, Sr.C. instructed
by Shri Mahendra B. Kolpe
APP for Respondent – State : Mrs. R. P. Gour
Advocate for the informant to assist PP : Shri T. M. Venjane

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CORAM : M. G. SEWLIKAR, J.

DATED : 21-02-2022

PER COURT :-

1. Heard.
2. The informant is the father of Kalyani (since deceased).

Marriage of Kalyani was solemnized with applicant No. 1 Amit on 18th February, 2018 at village Bavi (Dhoki). Dowry as agreed was paid. However, Rs. 1,00,000/- was left to be paid. It was agreed to be paid within 6 to 7 months after marriage.

3. On 12th November, 2019, Kalyani had been to her maternal place at village Bavi. At that time, she told that applicant No. 1 had started demanding remaining amount of dowry of Rs. 1,00,000/- and on that count, applicant and his parents started illtreating her physically and mentally. She used to be kept starved and she used to be given stale food. Both the applicants and other accused started illtreating her calling her an infertile woman.

4. Thereafter applicant No. 1 and deceased shifted to village Bavi and started residing in a house of tins. It is further alleged that applicant established illicit relations with wife of Mahesh Mate, who was working in the field of applicant No.1 as a labour and also a tractor driver.

5. On 18th October, 2021 at 11.00 to 11.15 p.m. informant received a phone call from applicant No.1 enquiring as to whether deceased had been to the informant. When they went to village Bavi, they found that applicant No. 1 was watching T.V.

When applicant No. 1 was asked about the whereabouts of the deceased he gave no answer. On taking search, it was found that footwears of the deceased were found at the well. Thereafter, dead body of deceased was fished out from the well. On these allegations F.I.R. came to be lodged on 19th October, 2021.

6. Heard learned Senior counsel Shri R. S. Deshmukh for the applicants, Smt. R. P. Gour, learned APP for the State and Shri Venjane, learned counsel for the informant to assist PP.

7. Learned Senior counsel Shri R. S. Deshmukh submits that applicant No.1 along with deceased had shifted to Bavi. Grand father of deceased was living at Bavi itself. He submits that allegations of illicit relations are made against applicant No.1, however, informant has not stated anything in his statement under Section 164 of the Code of Criminal Procedure about the illicit relations. Mother of the informant has also not stated anything in that respect. He submits that in the statement under Section 164 of the Cr.P.C., mother of the deceased has stated that the applicant used to make a phone call to Kalyani and he used to tell her that he is with wife of Mahesh Ankush Mate.

8. Learned APP Smt. Gour and learned counsel Shri Venjane submit that deceased Kalyani died issueless. Applicant Nos.1 and 2 and other accused used to call her a barren woman. They used to harass her on account of non payment of remaining amount of dowry. Both of them submit that there are indecent photographs of applicant No.1 and wife of Mahesh Mate by the name of Ashwini. They submit that the father of the informant did not make any allegation about illicit relations of applicant No.1 with Ashwini in his statement under Section 164 of the Cr.P.C. However, mother of the deceased has stated about illicit relations between the applicant No.1 and the said Ashwini. Both of them submit that deceased was subjected to severe harassment and, therefore, they do not deserve to be released on bail.

9. So far as demand of dowry is concerned it is vaguely alleged that she was subjected to physical and mental harassment. No specific role is attributed to any of the applicants. In the statement under Section 164 of Cr.P.C. also nothing is stated by the mother of the deceased about the alleged demand of dowry and consequent physical or mental harassment. So far as the informant is concerned, he has also vaguely alleged about demand of dowry. He has vaguely alleged that applicant Nos. 1 and 2 and other accused subjected

her to illtreatment, however, what kind of illtreatment was inflicted on her, has not been stated.

10. So far as allegation in respect of infertility is concerned, it is also vague. So far as allegation about illicit relations is concerned there are indecent photographs of applicant No.1 and Ashwini.

11. The Honourable Supreme Court in the case of **K. V. Prakash Babu Vs. State of Karnataka (2017) 11 Supreme Court Cases 176** has held that extra marital relations per se would not come within the ambit of Section 498-A of the Indian Penal Code. It can at the most be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. The Honourable Supreme Court has observed thus :

“14. Slightly recently in [Ghusabhai Raisangbhai Chorasiya v. State of Gujarat](#)⁵ the Court perusing the material on record opined that even if the illicit relationship is proven, unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty the explanation (a) to [Section 498-A](#) of the IPC which includes cruelty to drive the woman to commit suicide, would not be attracted. The relevant passage from the said authority is reproduced below :- (SCC pp. 759-60, para 21)

“21 ...True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of [Section 498A](#) IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal

and immoral, as has been said in Pinakin Mahipatray Rawal⁴, but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with Appellant 4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to [Section 498-A](#) IPC which includes cruelty to drive a woman to commit suicide, would not be attracted.”

12. Applicant No.1, according to Shri Venjane, learned counsel for the informant is a police constable. He will pressurise the witnesses if he is released on bail.

13. Considering the evidence collected by the prosecution, I am inclined to release the applicants on bail by putting stringent conditions. Hence, the order :

ORDER

1. Bail Application No. 104 of 2022 is allowed.
2. Each of the applicants be released on P.R. bond of Rs. 50,000/- (Rupees Fifty Thousand only) with one solvent surety each in the like amount in connection with CR No. 288/2021 registered with Dhoki Police Station, District Osmanabad under Sections 304-B, 498-A read with Section 34 of the Indian Penal Code, 1860, and on condition that they shall not enter village Bavi and village Khed till conclusion of the trial and they should

not keep any contact with any of the witnesses till conclusion of the trial.

3. All applications shall stand disposed of.

4. It is clarified that the observations, made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]

shp/-