

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.136 OF 2022

SAVITA W/O RAMDAS GAIKWAD

VERSUS

THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. A. D. Ostwal h/f Mr. K. D. Jadhav

APP for Respondent-State : Mr. A. M. Phule

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CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 17-02-2022

ORDER :

1. Present application has been filed by the applicant who is apprehending her arrest in connection with Crime No.1238 of 2021, registered at MIDC Waluj Police Station, District Aurangabad, for the offences punishable under Section 306, 504, 506 read with 34 of the IPC.

2. Heard learned Advocate Mr. A. D. Ostwal holding for Mr. K. D. Jadhav, and learned APP Mr. A. M. Phule for respondent-State. In order to cut short, it is stated that both of them have made

submissions in support of their respective contentions.

3. The FIR has been lodged by one Laxman Rambhau Mule, who is the husband of deceased Savita, and it is against present applicant and three more persons. It has been contended by the applicant that cousin brother of deceased Savita was working with accused No.1 Ramdas Gaikwad about 1 ½ years prior to the FIR. Thereafter, accused No.1 had taken a contract of constructing house adjacent to the house of informant. Accused No.1 Ramdas got acquainted with deceased Savita and they used to talk with each other. It is then stated that accused No.1 used to force deceased Savita that she should maintain love relations with him. When deceased Savita had told the said fact to the informant and her cousin brother, at that time they had given understanding to accused No.1. The fact was also known to present applicant and co-accused No.3 and 4 who are her children. Present applicant and children used to abuse deceased Savita on the count that she used to talk to accused No.1 who is the husband of present applicant. Informant had clarified to the present applicant that there is no love relationship between deceased Savita and her husband and she should not make unnecessary allegations about their relationship,

still the accused persons were harassing deceased Savita. There used to be quarrels between the two families. Deceased Savita, therefore, took up a job in private company, still present applicant used to abuse deceased Savita and alleged that she is not serving anywhere, but she is taking disadvantage under that pretext and she is roaming with her husband. There used to be mental harassment to the informant and his family about the behaviour of the accused persons. Informant returned at about 07.00 p.m. on 27-11-2021 from his place of work. After his return, his wife deceased Savita told him that around 12.00 p.m., the present applicant and her children had come to their house and started asking as to why she is talking with her husband, roaming with him and she should not keep any kind of relations or affairs with accused No.1. They also given threat that if she is found with accused No.1, then they will not leave her. According to the informant since then deceased Savita went into mental depression and stopped going at her place of service. Thereafter, informant had gone to MIDC, Waluj at about 09.00 a.m on 30-11-2021 and deceased Savita was alone at home. At about 01.00 p.m. informant received phone call from one Vasant Aute stating that Savita has consumed poisonous medicine at about 12.30 p.m., and she is in need of care, he should immediately come back.

Informant went and found that his wife Savita was in unconscious state on bed. Thereafter, informant and others took deceased to one Ashtavinayak Hospital, however, he could not afford the medical treatment there, so he shifted her to Ghati Hospital, Aurangabad. Savita expired at about 07.30 a.m on 05-12-2021, and thereafter, the FIR has been lodged on 30-12-2021.

4. Thus, perusal of the contents of the FIR it can be seen that Savita had expired on 05-12-2021, but the FIR has been lodged on 30-12-2021. There appears to be delay in lodging the FIR. The delay can be explained, however, its immediate explanation definitely matters, which is absent in this case.

5. It can also be seen from the contents of the FIR that though all these alleged things were happening, yet neither the informant nor his wife had ever tried to lodge a report with the police. Since when that harassment was going on, has not been stated specifically, but at one place it is stated that the harassment is since 01-06-2020. This long delay and inaction on the part of the informant as well as his wife, are the points which prompt this Court to consider the application for anticipatory bail.

6. The police papers would show that on 02-12-2021 a so called dying declaration stated to be given by deceased Savita has been recorded by Police Head constable of MIDC Waluj Police Station. Almost the same facts have been reiterated by her, but interestingly, offence has not been registered on the basis of this dying declaration. Whether that dying declaration is admissible or not, is a different question which will have to be considered by the Trial Court. But at this stage the fact remains that police had not registered the offence though the said dying declaration is stated to have been recorded by the Head Constable attached with the same police station with which now the FIR has been lodged. Another fact to be noted is that the informant appears to have made complaint in writing to Police Commissioner, Aurangabad, on 07-12-2021 (below that date mentioned is 13-12-2021) stating that offence should be registered in respect of death of his wife. In this complaint application, there is no mention of the offence dying declaration recorded by the police, but then he states that when he had gone to lodge the report with the police i.e. MIDC Waluj Police Station, police had refused to accept the same and it is stated in this complaint that police told him that till they do not get any evidence,

they will not register offence. This may give a reason for belated FIR, but then the prosecution will have to prove the same, yet independently it is required to be seen that whether the present applicant had in any way abetted the commission of the suicide. The provisional cause of death given by Autopsy Surgeon states, *"Evidence of poisoning seen, however, final opinion will be given after chemical analysis reports are made available."*

7. Statements of witnesses have been recorded and the statement of the landlord and the landlady, in whose house informant and deceased were residing on rent, have stated that deceased used to talk on mobile for long periods, and therefore, on that count there used to be quarrels between her and informant. They had advised them not to quarrel, but it was not taken positively by them. That means, they are not supporting the story told by the informant. Another lady residing in the neighbourhood also gives same version. Witness Priya Mahadu Kolte is stated to be the friend of deceased Savita since about 12 years, and she states that they were on talking terms. Still she says that when she had called deceased on 30-11-2021, at that time she found Savita was crying, and she asked the reason for the same, at that time Savita

had disclosed that person by name Gaikwad residing her neighbourhood used to follow her, and on that count the wife and children of that Gaikwad used to harass her by alleging that she has relations with that Gaikwad. She has no desire to leave and then she disconnected the phone. From her statement it appears that prior to 30-11-2021 deceased never disclosed about the alleged harassment. Interesting point to be noted is that the statement of one Jyoti Samadhan Nikam is stated to have been recorded on 08-12-2021 as well as 06-01-2022 (wrongly typed as 06-01-2021 in police papers), by different investigating officers, however, those two statements are contradictory to each other and the second statement is not considered as supplementary statement. Same is the case with Gangadhar Bhimrao Kanhere and Shakuntala Gangadhar Kanhere i.e. the landlord and landlady of the informant, whose earlier statements have been recorded on 08-12-2021 and the subsequent statement by another investigating officer have been recorded on 06-01-2022 (Wrongly typed as 06-01-2021 in police papers), and these statements are contrary to each other. In the subsequent statement of these three persons, there is no reference of earlier statement and they have not given any explanation as to why they are giving second statement. With this kind of evidence at

the most it can be stated that there was dispute between deceased and the present applicant and the applicant was under impression that there is illicit relations between her husband and the deceased. Whether quarrels on that count would amount to abetment, is a important point which will be considered at the time of trial. The alleged quarrel which is prior to the consumption of poison by deceased was on 27-11-2021 i.e. three days prior to that day, and it is only stated that after those quarrels on 27-11-2021, Savita was under mental tension. Earlier also there used to be quarrels on the same count. At no earlier point of time there was attempt to commit suicide by deceased Savita. Therefore, at the cost of repetition it can be said that whether those quarrels on 27-11-2021 *per se* would amount to abetment as contemplated under Section 107 and/or 306 of IPC, is a question. It is to be noted that the learned Additional Sessions Judge, Vaijapur, had granted anticipatory bail to the children of the present applicant, who had also accompanied the applicant on 27-11-2021. Though in the FIR accused No.4 has been shown to be 18 years old, it is stated that he transpired to be a minor. But then they had alleged to have given threat to kill Savita if she would have been seen with their father. Therefore, parity also requires that the present applicant should be

released on bail, accordingly, following order is passed.

ORDER

- 1) Application is hereby allowed.
- 2) In the event of arrest of applicant Savita w/o Ramdas Gaikwad, in connection with Crime No.1238 of 2021, registered with MIDC Waluj Police Station, District Aurangabad, for the offence punishable under Section 306, 504, 506 read with 34 of the Indian Penal code, she be released on P.R. of Rs.30,000/- (thirty thousand) with one or two sureties of like amount.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-