

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

29 BAIL APPLICATION NO.339 OF 2022

SHAIKH FEROZ SHAIKH LATIF
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Saeed S. Shaikh
APP for Respondent-State : Mr. B. V. Virdhe
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 11-04-2022

ORDER :

1. The applicant is seeking bail under Section 439 of Cr.P.C. He has been arrested in connection with Crime No.288 of 2021, registered at Selu Police Station, District Parbhani, for the offence punishable under Section 498-A, 306 r.w.34 of IPC.
2. Heard learned Advocate Mr. Saeed S. Shaikh for applicant and learned APP Mr. B. V. Virdhe for respondent-State.
3. Perusal of the FIR would show that it has been lodged by the father of the deceased. Deceased Nasrin Shaikh was the third child of informant Shaikh Gulludin Bashir. Nasrin Shaikh got married to present applicant on 23-05-2021 as per Muslim rites. According to the informant he had given gold ornaments worth Rs.1,50,000/- and

utensils at the time of marriage. Deceased started residing with her husband, mother-in-law, father-in-law, and four sisters-in-law. Informant states that Nasrin was treated properly for about one month by the in-laws and husband, and thereafter, they started demanding amount of Rs.2,00,000/- for purchasing car. They started giving pinching words to her and this fact was made known to the parents by Nasrin. They told the girl that since their financial condition is poor, they will not be able to give the amount, but the in-laws will treat her properly after some days. She was again sent back for cohabitation after persuading her. However, when she back, her husband and other co-accused persons started giving pinching words to her, kept her starving and told her that she will not be allowed to cohabit unless she brings amount from her parents. The mother-in-law, eldest sister-in-law had assaulted her and driven her out of the house. The informant then says that 10 to 12 days prior to the lodging of the FIR, he had gone to give advice to the accused persons and he told that his daughter should not be harassed for dowry, he is having poor financial condition, and therefore, he will not be able to fulfill the demand. At that time all the accused persons told that if amount of Rs.2 lakh are given, then only the daughter should be brought for cohabitation otherwise she

should be taken by the informant and then informant as well as the girl were driven out of the house. Informant says that deceased used to call the husband but husband used to say something to her, and therefore, she used to cry. Around 10.28 p.m. on 03-10-2021 deceased had given call to her husband. Informant was sleeping in the next room and woke up around 01.30 a.m. He went to the room of his daughter to see as to whether she has slept or not, he found that the girl was lying on the ground and froth was coming out of her mouth. Pesticide by name 'MONO' bottle was beside her and she told the father that due to the harassment by the in-laws and husband, she has consumed the poisonous substance. The informant then made arrangements to take her to hospital at Selu, but she was declared dead.

4. Now the investigation is complete and charge-sheet is filed, and therefore, the documents along with the charge-sheet would show that as per the post mortem report the final cause of death is reserved but the provisional cause of death is, "Respiratory failure due to poisoning." From the said fact it is certain that the deceased has committed suicide and it is within seven years of her marriage. Till this date the prosecution has not invoked Section 304-B of IPC,

but it would be the call for the Trial Judge to see as to whether the ingredients of the offence are transpired and whether to frame charge for the said offence or not. We need not go into that aspect at this stage.

5. The learned Advocate appearing for the applicant has tried to demonstrate that even prior to the marriage and after the marriage he has spent certain amount on the girl for taking the articles for her, and therefore, he wanted to tag with the defence that the applicant was not demanding amount/ dowry. So also he is relying upon the What's App chat between him and the deceased. However, at this stage, it can be said that since that is the electronic evidence, it will have to be proved by him within the parameters and also by complying the necessary requirements under Section 65-B of the Indian Evidence Act, that cannot be considered at this stage.

6. It appears that the girl was pregnant and some consultation was done with the doctors in Laxminarayan Hospital at Selu. In spite of the said fact that the girl was to become mother, why she could think of committing suicide, is a question. The applicant has tried to give his own reason in the memo of the application but that will have to be proved by him, and therefore, again that cannot be

considered here.

7. The fact remains is, that the girl has committed suicide when she had come to her father's place. According to the father, she was driven out of the house and it was specifically told by the accused persons that unless she brings amount of dowry, she will not be allowed to cohabit. If this kind of attitude would have been there for the accused persons then why there could be a detailed conversations between the applicant and the deceased, is a question. It appears that the CDR and SDR have been collected and it shows that there used to be continuous phone calls between the deceased and the applicant for about 10 to 12 days of prior to the lodging of the FIR. The informant says that after the girl as well as he himself came back to his place, when they were allegedly driven out, the girl used to give phone call to the husband and the husband used to say something to her and the girl used to cry. The obvious question would be, as to why the father had not asked on such occasions when he found that the girl was crying as to what were the dialogues between her and her husband. If we simply go by the SDR and CDR and also the supplementary statement of the informant stating that on the day of incident the girl was talking

from 10.30 p.m. to 01.30 a.m., then it gives rather a different picture, if the relations are strained then there will not be so much of talks. The statements of witnesses, especially the relatives of the deceased, have echoed the FIR. However, none of them have stated that they had tried to settle the dispute in any manner. If they are the relatives, why they had not intervened, would be the question. Mere statements after the incident has happened, will not be of any use.

8. Another factor that is also to be required to be noted is that in FIR it is stated that from 10 to 12 days prior to the incident, when the informant had gone to the house of the applicant, he as well as deceased were driven out of the house by saying that unless the girl brings the dowry, she will not be allowed to cohabit. In the entire charge-sheet there is no such evidence on record to show that the other co-accused had in any way, had any kind of dialogue with the deceased, then how they can be said to have instigated or abetted the commission of the suicide by the girl, is a question. This shows the tendency of the informant to rope all the family members of the applicant. When none of the witnesses, including the informant has knowledge as to what was the dialogues between the deceased and

her husband, whether it amounts to instigation, is also a question, and therefore, taking into consideration the evidence that has been collected, it would take long time to stand the trial, this is the fit case where the applicant should be released on bail. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Applicant Shaikh Feroz s/o Shaikh Latif, arrested in connection with Crime No.288 of 2021, dated 04-10-2021, registered with the Police Station, Selu, District Pabrhani, for the offence punishable under Section 498-A, 306 r.w.34 of the IPC, he be released on P.R.Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.
- 3) The applicant shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall not indulge in any criminal activity.
- 5) Before submission of bail papers, the applicant should give complete address of his residence with his mobile number. So also he should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.

6) The appellant to attend Selu Police Station Dist. Parbhani, on every Sunday in between 09.00 a.m. to 12.00 noon, till filing of the charge-sheet.

7) Bail before Trial Court.

8) It is clarified that, the above observations by this Court are the *prima facie* expressions and not to be considered at the time of final hearing before the Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.