

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.331 OF 2022

1. Balasaheb s/o Rambhau Dalvi
 2. Asha w/o Balasaheb Dalvi
- ... Applicants

Versus

The State of Maharashtra

... Respondent

...

Mr. R. R. Karpe, Advocate for applicants.

Mr. B. V. Virdhe, APP for the respondent – State.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23.03.2022

PER COURT :

1. The applicants are apprehending their arrest in connection with Crime No.561 of 2021 registered with Ahmednagar Taluka Police Station, Dist. Ahmednagar for the offences punishable under Sections 304-B, 306, 498-A, 323, 302, 504, 506 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. R. R. Karpe for the applicants and learned APP Mr. B. V. Virdhe for the respondent – State.

3. It has been vehemently submitted on behalf of applicants that the applicants are the father-in-law and mother-in-law of the deceased. FIR

has been lodged by father of the deceased. Deceased Yogita was given in marriage to the son of present applicants and their marriage had taken place three months prior to the FIR. It has been alleged that the present applicants as well as the husband of Yogita were demanding amount of Rs.5,00,000/- as dowry, however, due to the financial condition of the informant, he could not give that. It is then alleged that she was harassed since last two months prior to the institution of FIR. On 12.10.2021, informant was informed that husband of the deceased has throttled deceased Yogita and then her dead body has been brought to Anandrushi Hospital. Informant went along with his relatives to the hospital and could see the strangulation marks. He has, therefore, lodged the report. However, the police have not registered offence under Section 302 of Indian Penal Code. Now, the investigation is over and charge-sheet has been filed on 09.01.2022. Co-accused i.e. the brother-in-law and sister-in-law (brother's wife) of the deceased have been released by this Court on anticipatory bail on 28.01.2022. Therefore, on the ground of parity, the applicants deserve to be released on bail.

4. Per contra, learned APP strongly opposed the application and submitted that the present applicants are absconding and the charge-sheet came to be filed under Section 299 of the Code of Criminal

Procedure against them. Deceased expired within three months of her marriage. This fact itself is very much clear to infer that the death of Yogita is unnatural. The postmortem report also shows that there was ligature mark from the front side of the neck situated above the level of thyroid cartilage running obliquely upwards and backwards. The probable cause of death has been shown as hanging and the statements of witnesses would show that the persons residing nearby had seen that deceased had hanged herself. Therefore, probably Section 302 of Indian Penal Code has not been invoked. Though it appears that at the time when the FIR was lodged it was invoked, but charge-sheet is not filed under that Section. No circumstance has been shown for grant of extraordinary relief in favour of the applicants. Merely because they are suffering from some ailments or old, it cannot be the ground to release them under Section 438 of the Code of Criminal Procedure.

5. At the outset, it is to be noted that the applicants are aged 51 and 45 years respectively and, therefore, they cannot be said to be old enough. Another fact is that the general diary entry of 09.01.2022 shows that since it was transpired that Yogita had hanged herself, the Investigating Officer had deleted Section 302 and added Sections 306, 304-B of Indian Penal Code. It is very much unfortunate that a young girl of 22 year old, who got married three months prior to her death, has

ended her life in such a way. The applicants independently are not giving any reason as to why Yogita had committed suicide. The informant who is the father of the deceased says that his daughter was treated properly for about a month and thereafter, she was harassed, abused and assaulted, as the informant could not make the arrangement for the amount of Rs.5,00,000/- which was demanded as dowry. But then he says that at the time of marriage, he had given 5 Tola chain and ring. Taking into consideration the observations in the postmortem report, it is clear that it is unnatural death. The applicants have gone absconding. In fact, though their son Nilesh i.e. husband of deceased Yogita came to be arrested on 13.10.2021 itself and it is stated that the present applicants were residing in the same house, still then they are not available for the police. This shows that they were avoiding the arrest. Therefore, in view of the decision in *Lavesh Vs. State (NCT of Delhi)*, [2012 (8) SCC 730], the applicants do not deserve extraordinary relief in the nature of anticipatory bail. Application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm