

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 APPLICATION FOR CANCELLATION OF BAIL NO.115 OF 2021

Bhagwan s/o Kerba Raut

... Applicant

Versus

1. The State of Maharashtra
2. Chandrakant s/o Pralhad Kambale
3. Pralhad s/o Fakir Kambale
4. Sumanbai w/o Pralhad Kambale
5. Varsha w/o Rajesh Wavhale

... Respondents

...

Advocate for Applicant : Mr. Abhishek C. Deshpande h/f Mr. Jadhav
Vithal M.

APP for Respondent No.1 – State : Mrs. Vaishali Patil Jadhav

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08.03.2022

PER COURT :

1. Heard learned Advocate Mr. Abhishek Deshpande holding for learned Advocate Mr. V. M. Jadhav for the applicant as well as learned APP.

2. Present application has been filed under Section 439(2) of the Code of Criminal Procedure for cancellation of bail granted to respondent Nos.2 to 5 by learned Additional Sessions Judge, Parbhani in Criminal Miscellaneous Application No.151 of 2021 on 23.03.2021

under Section 438 of the Code of Criminal Procedure.

3. It has been submitted on behalf of the applicant that deceased was the sister of the applicant. She got married to respondent No.2 about 2 years prior to the FIR. The informant had given dowry of Rs.1,00,000/-, gold ring and domestic articles at the time of marriage. Respondent No.2 is the husband, respondent Nos.3 and 4 are the parents-in-law and respondent No.5 is the sister-in-law of the deceased. Informant states that deceased treated properly for about 6 months and, thereafter, they started harassing her with demand of Rs.1,00,000/- for purchasing new truck. He then states that the accused persons were harassing deceased mentally as well as physically and he came to know about it whenever she used to meet him either at his house or when he had gone to meet her at the matrimonial home. He then states about certain communication on 01.03.2020 and 31.03.2020 (It appears to be a typographical mistake as 31.02.2020). But on that day i.e. 31.03.2020, his father received phone call around 1.30 p.m. informing about death of the deceased. When the informant and others went in hospital, it was told to them that she had suffered electric shock. It is also then stated that the inquest panchanama was drawn and, at that time, informant had asked the police that his complaint should be taken, but it was not taken. Thereafter also there were attempts by him to lodge the report,

however, no report was taken and, therefore, he filed complaint with Magistrate for taking action under Section 156(3) of the Code of Criminal Procedure and after the Magistrate had given directions, the FIR came to be lodged on 10.02.2021.

4. The learned Advocate for the applicant further says that all those facts those have been mentioned in the complaint application as well as the FIR were not considered by the learned Additional Sessions Judge while granting anticipatory bail. The custodial interrogation is necessary in serious offence when the informant is alleging that it was, in fact, a murder of his sister by the accused persons.

5. Learned APP has submitted that C-Summary report has been filed by police before the learned Magistrate and it is pending for the final orders.

6. It is to be noted that when the application under Section 438 of the Code of Criminal Procedure was filed by respondent Nos.2 to 5 what was required to be seen was whether the custodial interrogation is necessary. It cannot be said that accidental death would not have been registered under Section 174 of the Code of Criminal Procedure, which contemplates an inquiry. When the inquiry was made and it appears that the police were not of the opinion that it is a case of murder, it

appears that no offence was got lodged. Now, as a result of the order passed under Section 156(3) of the Code of Criminal Procedure, the FIR came to be registered. This Court is not sitting as an Appellate Court to assess the order of the learned Magistrate under Section 156(3) of the Code of Criminal Procedure, but then the papers before this Court are not indicating as to what was seen by the learned Magistrate while passing the said order under Section 156(3) of the Code of Criminal Procedure. The offence has been registered only under Section 302 of Indian Penal Code now. There is no addition of Section 498-A of the Indian Penal Code. Again this Court is handicapped in view of the fact that the complaint application before the learned Magistrate is not before this Court and it cannot be revealed as to whether the present applicant, in his complaint for taking action under Section 156(3) of the Code of Criminal Procedure, had made out a case that the offence should be registered under Section 498-A of Indian Penal Code or not. The offence came to be registered on 10.02.2021 and the applicant has not produced on record that after the registration of offence vide Crime No.59 of 2021, he had approached the learned Magistrate for addition of Section 498-A of Indian Penal Code. Therefore, what was before the learned Additional Sessions Judge was as to how the deceased had expired. From the impugned order, it can be seen that the report dated

28.05.2020 stated that deceased died due to electrocution. Even Maharashtra State Electricity Distribution Company Limited (MSEDCL) had prepared the comprehensive report after making spot inspection, panchanama, statements and postmortem report and, therefore, it was observed that death appears to be accidental and not homicidal and, therefore, the anticipatory bail was granted. There is no reason to take away the liberty that has been granted. Further, in view of the fact that C-summary is now filed, till the further recourse is taken up, that protection granted under Section 438 of the Code of Criminal Procedure deserves to be continued for respondent Nos.2 to 5. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm