

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.199 OF 2021

SHARAD KAMLAKAR KOLTE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Anandsingh Bayas
APP for Respondent No.1-State : Mr. N. T. Bhagat
Advocate for Respondent No.2 : Mr. R. K. Temkar

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
18-02-2022**

**Date of Pronouncing The Order :
07-06-2022**

ORDER :

1. Present application has been filed under Section 439 (2) of Cr.P.C. by the original informant to challenge the order dated 28-10-2021 passed by learned Additional Sessions Judge, Sangamner, District Ahmednagar, in Criminal Bail Application No.359 of 2021 along with regular bail under Section 439 of Cr.P.C. of respondent No.2 in connection with Crime No.452 of 2021, registered on 01-09-2021 with Sangamner City Police Station, Taluka Sangamner, District Ahmednagar, for the offence punishable under Section 306, 498-A, 323 of IPC.

2. Heard learned Advocate Mr. Anandsingh Bayas for applicant,

learned APP Mr. N. T. Bhagat for respondent No.1-State, and learned Advocate Mr. R. K. Temkar for respondent No.2.

3. The learned Advocate appearing for the informant who is the brother of the deceased Dr. Poonam who was the wife of respondent No.2 submitted that there is ample evidence against respondent No.2 to show that he had subjected the deceased to cruelty and drove her to commit suicide. Deceased Poonam got married to respondent No.2 on 08-07-2011 and they have son out of the wedlock. The death is unnatural. The post-mortem report would show that there was a ligature mark and the cause of death is "Asphyxia due to Hanging." The evidence that has been collected is in the form of statements of witnesses under Section 161 of Cr.P.C., mobile conversations and even the CCTV Footage of the hospital. Respondent No.2 is a child specialist in Sangamner who runs hospital by name 'Chirayu Children's Hospital.' Deceased was also the Medical Officer. There was illegal demand of money by respondent No.2 since last many years and there is evidence to show that certain amount was given by the informant as well as the father of the informant and deceased to the account of deceased. In spite of giving money as per the demand, yet the deceased was

tortured. No doubt, the principle of law, "the bail is rule and jail is an exception," is in existence yet it cannot be used in each and every case. When there is strong prima facie case against the accused, then such persons, even regular bail, ought not to have been granted. Respondent No.2 used to pick up quarrels on trifling matters also and used to instigate their son as well as corrupt his mind against the mother. The learned Advocate appearing for the applicant has drawn the attention of this Court to the extracts of conversation between deceased Poonam and her mother before the incident. It shows that to what extent the deceased was subjected to cruelty and it is the only behaviour of respondent No.2 which has led to her death. The learned Additional Sessions Judge has committed illegality and/or error in allowing the said application under Section 439 of Cr.P.C., and therefore, it deserves to be set aside.

4. The learned Advocate for respondent No.2 submitted that the learned Additional Sessions Judge had rejected the bail application filed by respondent No.2 under Section 438 of Cr.P.C. Thereafter, he had approached this Court and then this Court was not inclined to grant him any relief, and therefore, that application came to be

withdrawn. Respondent No.2 was thereafter arrested on 21-10-2021. He has undergone the PCR, and thereafter, he was in jail till 28-10-2021. Now the investigation is over and charge-sheet is filed. The contention of the informant that there was illegal demand by respondent No.2 is false. Affidavit has been filed by respondent No.2 to oppose the present application along with that he has produced certain documents. It is stated that the hospital in which he has residence in the same building was constructed with amount of Rs.50 lakh. The hospital staff consist of two doctors, two nurses and one pharmacist. The medical equipment and machinery is to the tune of Rs.25 lakh approximately. Respondent No.2 has obtained loan which is yet to be repaid and he is regularly paying it. His financial condition is stable, and therefore, there was no question of illegal demand. The applicant has suppressed the fact that the deceased had taken admission for post graduation i.e. M.D. (Doctor of Medicine). She had appeared for NEET examination and she got admission in M.D. (Pathology) in Pravara Medical College from management quota which was the payment seat from July 2020 Session. For that purpose, respondent No.2 had paid tuition fees of Rs.15,07,000/- and Rs.96,000/- towards eligibility fees and other fees of the college. In the second year he paid Rs.10,52,930/-. It

shows that he had desire that deceased Poonam should get her M.D. done. He has provided all the amenities like car and other things in the house. In fact Poonam was saying that she is fed up with the M.D. studies and will not go to the college. Still by persuading her, he had left the premises of the college. Deceased was employed as Medical Officer with Municipal Council, Sangamner, however, she had resigned from the post for persuading her M.D. Education. It has been falsely contended that respondent No.2 had forced her to resign, but the resignation letter, copy of which has been produced on record, would show that it was her voluntary act. Respondent No.2 has not committed any offence and he has co-operated with the investigation. His further physical custody was not required, and therefore, the learned Additional Sessions Judge was justified in allowing his application under Section 439 of Cr.P.C.

5. In view of the fact that almost all the things have been narrated in the aforesaid paragraphs, they are not required to be reproduced. Respondent No.2 had made an application for anticipatory bail and it came to be rejected on 20-09-2021 by the learned Additional Sessions Judge, Sangamner, and as aforesaid, he had approached this Court, but when this Court was not inclined to

grant any relief, he withdraw that application on 20-10-2021. He then came to be arrested and it appears that when he was in magisterial custody, he filed application under Section 439 of Cr.P.C. That application was resisted by the present applicant before the learned Additional Sessions Judge. Important point to be noted is that the same Judge has allowed the application under Section 439 of Cr.P.C. who had earlier rejected anticipatory bail application. Both the orders are on record and it can be seen that the different parameters which are required to be considered for application under Section 438 of Cr.P.C. and under Section 439 of Cr.P.C. have been followed properly. Material was available before the concern Court when respondent No.2 sought regular bail. At the cost of repetition it can be said that the offence that was registered was under Section 304-B, 306, 498-A, 323 of IPC. Nothing more was required to be recovered from respondent No.2. In both the orders, the learned Additional Sessions Judge has taken note of ingredients of Section 304-B of IPC and prima facie it was observed that those ingredients are not applicable to the facts of the case. Here, the death is after seven years of marriage and that too taking into consideration the post mortem report wherein the cause of death is clearly stated as, "due to hanging", the learned Judge was justified

in observing that the ingredients of Section 304-B of IPC are not attracted. As regards the telephonic conversation between the deceased and the mother is concerned, it has been recovered by the Investigation Officer. The said conversation together with the statements of the witnesses under Section 161 as well as 164 of Cr.P.C. would show that there used to be frequent quarrels between the deceased and respondent No.2. As regards the advancement of the amount is concerned, no doubt there is evidence to show that the amount was given to deceased. Now whether it was further transmitted by deceased to respondent No.2 would be the matter of proof. When the further custodial interrogation was not required and also taking into consideration the standard of respondent No.2 in the society, there was no question of fleeing away of the concerned accused. The learned Additional Sessions Judge was justified in allowing the said application subject to conditions. Under such circumstances, there is no scope for any interference by this Court under Section 439 (2) of Cr.P.C. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.