

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 110 OF 2022

Vijaya Ashok Markad & ors. ...Applicants

Versus

The State of Maharashtra ...Respondent

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KULKARNI

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Mr. Vivek Salunkhe i/b Abhideep Khaladkar, for the
Applicant.

Mrs. J. S. Lohokare, APP for the State/Respondent.

Mr. Shailesh Kharat, for the Intervener.

CORAM: N. J. JAMADAR, J.

DATED: 27th JUNE, 2022

ORDER:-

1. This is an application for pre-arrest bail in connection with CR No.329 of 2021, registered with Paud Police Station, Pune, for the offences punishable under Sections 306, 304-B, 498A, 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").

2. Rohini (the deceased) was the daughter of Janardan Sathe (the first informant). Her marriage was solemnized with Tejas Markad, the son of applicant nos.1 and 2 and brother of applicant no.3, on 2nd May, 2021. After about two months of the marriage the deceased had visited her parental home. At that time, the deceased had narrated that the applicants

passed taunts by asserting that, though it was a love marriage between the deceased and Tejas, the deceased was required to live as desired by them. Applicant nos.1 and 2 put various restrictions. Applicant no.3 also passed insinuations. In the month of August 2021, Tejas constructed a new home at Nande. Before the house warming, the deceased had visited her parental home. According to the deceased, the applicants and her husband were exerting pressure on her to bring TV, fridge, oven, washing machine and sofa-set for the new home.

3. On 27th November, 2021, the first informant alleged that, the deceased had been to his home. Tejas had called her. They had a hot exchange of words and the deceased went to her matrimonial home, hurriedly. On the night of 28th November, 2021, the first informant's son Mayur was informed on phone that the deceased passed away at Symbiosis Hospital. Upon reaching Symbiosis Hospital, they learnt that the deceased died by suicide. There were marks of injury on her face and hands. Hence, the first informant lodged the report.

4. Apprehending arrest, the applicants preferred an application for pre-arrest bail. Initially, the learned

Additional Sessions Judge, was persuaded to grant interim protection by an order dated 1st December, 2021. Subsequently, by an order dated 5th January, 2022, the application came to be rejected. However, the interim protection was continued qua the applicants. On 17th January, 2022, this Court continued the interim protection as was granted by the learned Additional Sessions Judge.

5. I have heard Mr. Salunkhe, the learned Counsel for the applicants, Mrs. Lohokare, the learned APP, for the State and Mr. Kharat, the learned Counsel for the intervener, at some length. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 ("the Code") and the documents annexed with it as well as the material on record.

6. Mr. Salunkhe, the learned Counsel for the applicants submitted that qua the applicants allegations are of general nature. There was no specific allegation that any of the applicants made any demand of dowry. It was submitted that in the First Information Report (FIR), the first informant did not advert to any demand of money. However, in the statements of the mother and sister of the deceased, a concerted effort has been made to attribute unlawful demand of money and property to the accused. Yet, those allegations

are primarily against the husband of the deceased and not against the applicants. Mr. Salunkhe would further urge that applicant no.3 had not been residing with the deceased, her husband and in-laws. Applicant no.3 resides at her matrimonial home since more than eight years. Therefore, the applicants deserve the relief of pre-arrest bail.

7. The learned APP, on the other hand, submitted that the deceased met an unnatural death under seven months of her marriage. There are specific allegations of harassment, and also unlawful demand of money and property and the consequent harassment. According to the learned APP, the presumption contained in Section 113 B of the Evidence Act comes into play and, thus, it cannot be said that no *prima facie* case for the offence punishable under Section 304-B of the Penal Code is made out.

8. Mr. Kharat, the learned Counsel for the intervener – first informant, supported the submissions of the learned APP. Taking the Court through the statements of the witnesses, Mr. Kharat would urge that in the face of the overwhelming material, the applicants do not deserve exercise of discretion.

9. I have given my anxious consideration to the rival submissions. Evidently, the deceased met an unnatural death under seven months of the marriage. The autopsy surgeon opined that the cause of death was Cardio-respiratory Arrest due to Asphyxia due to hanging. The pivotal issue, which crops up for consideration is, whether there is *prima facie* material to indicate that the applicants had subjected the deceased to cruelty or harassment for and in connection with the demand of dowry. This would also subsume the question as to whether the applicants by so subjecting the deceased to cruelty abetted the commission of suicide by the deceased.

10. In the FIR, recorded on 28th November, 2021, the first informant had adverted to three aspects. First, though the deceased and Tejas had a love marriage, the applicants tried to impose their views and desires on the deceased and Tejas and controlled their lives. Second, after Tejas constructed a new home at Nande and before its house warming function, the deceased had visited his home and informed that the applicants and Tejas were exerting pressure on her to bring TV and other white goods in the new home. Thirdly, on 27th November, 2021, the deceased had come to his home but

hurriedly left the home as Tejas had called her and there was an exchange of words between them.

11. It is imperative to note that on the second aspect of demand of white goods, the first informant did not state that the said demand was met. In contrast, Mrs. Mangal Sathe; the mother of the deceased, Mayur Sathe; the brother of the deceased and Manasi Sathe; the sister of the deceased, whose statements were recorded on 14th December 2021 and 16th December, 2021, stated that the said demand was met, so that there was no harassment to the deceased. Likewise, Mangal and Manasi stated about the payment of a sum of Rs.13,000/- to Tejas in the month of November, 2021, which was not adverted to by the first informant.

12. As regards the events, which transcribed on 27th November, 2021, Mangal; the mother of the deceased had a different take. She stated before the police that on that day the deceased was sent to bring a sum of Rs.1,00,000/- and her husband Tejas called her on a phone and asked her to immediately return if the money was not arranged and they would see as to what was to be done with her.

13. Mr. Salunkhe was justified in advancing a submission that these facts which, in a sense are notorious, were not

adverted to by the first informant while lodging the report. In any event, the allegations of unlawful demand and the consequent harassment relatable to the events on 27th November, 2021, appear to be primarily against Tejas, the husband of the deceased. The allegations of harassment attributed to the applicants are of general nature. The allegations against the applicants do not appear to be of such incriminating tendency as to warrant their custodial interrogation imperative.

14. The stage of the proceedings also assumes significance. Investigation is complete for all intent and purpose. Charge-sheet has been lodged. The applicants appear to have roots in society. Possibility of fleeing away from justice thus seems to be remote.

15. For the foregoing reasons, I am persuaded to exercise the discretion in favour of the applicants.

16. Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) In the event of arrest of the applicant nos.1 Mrs. Vijaya Ashok Markad, 2. Ashok Eknath Markad and

3. Mrs. Kirti Keshav Chemate, in CR No.329 of 2021, registered with Paud Police Station, Pune, they be released on bail on furnishing a P.R. Bond in the sum of Rs.25,000/-, each, with one or two sureties in the like amount.

(iii) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The applicants shall regularly attend the proceedings before the jurisdictional Court.

[N. J. JAMADAR, J.]