

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2316 OF 2021

Sangam Shankar Vayale .. Applicant
Versus
The State of Maharashtra .. Respondent

...

Mr. Kabul Singh Labana for the applicant.
Ms.P.N. Dabholkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 23rd AUGUST, 2022

P.C:-

1 The applicant is charged u/s.302, 304B, 498-A, 201 read with Section 34 IPC in C.R.No.I-181/2018 registered with Hill Line police station on 20/7/2018,

The applicant came to be arrested on the very same day and since then, he is behind bar.

2 On completion of investigation, charge-sheet came to be filed and the applicant approached the Sessions Court for seeking his release on bail and his application was rejected on 22/6/2021.

3 Heard Mr.Kabul Singh Labana for the applicant and Ms.Dabholkar for the State. The learned counsel for the applicant would submit that the material compiled in the charge-

sheet fall short of the charges levelled against him, and it is submitted that the co-accused Leelabai, his mother has been released on bail by this Court on 24/3/2021 vide Bail Application No.557/2020.

4 The deceased is one Vaishali, who is the wife of the present applicant. The marriage of the applicant was solemnized with Vaishali on 1/5/2016 and the charges levelled in the charge-sheet is from the date of her marriage, she was subjected to harassment by accused no.2 by alleging that they were not properly honored during the marriage ceremony and she used to take jibe at her. The charge-sheet allege that the applicant and his mother used to beat her, and when the mother of the deceased inquired about the marks on her body, she avoided to answer. A child was born out of the marriage, but very soon, he was taken ill and it is alleged that the applicant dropped Vaishali to her parental house. She joined him after some days, but it is alleged that she was subjected to mental and physical cruelty.

5 On 20/7/2018, the complainant was informed that the deceased had burnt herself and when they reached her house, it was found that she was found to be lying in a burnt condition and complaint came to be lodged by the informant, alleging that the applicant, his mother and his sister had harassed her, and being fed up of the physical and mental harassment, she had poured kerosene on herself and put an end to her life.

6 However, during the course of investigation, when the body was forwarded to post mortem, and the report was given that there were injuries on her body, and it was mentioned that she was first assaulted and then for the purpose of destroying the evidence, she shall set ablaze and hence, offence u/s.302, 201, 304B was added and the charge-sheet is filed under the said Sections.

7 The brother of the deceased lodged the FIR and apart from referring to the harassment, while narrating the incident of 20/7/2018, he has stated that when he reached the house of his sister Vaishali, the main door was open, but the door leading to the kitchen was bolted from inside and therefore, they kept standing outside the house. At that time, the applicant and his aunt arrived there, and they indicated to the back side door of the kitchen which was open, from which entry could be gained. When they looked from the door, they could see Vaishali lying in the kitchen in the burnt condition and she was already dead. Near her body, a yellow colour plastic can and a match-box was lying and therefore, they assumed that being fed up with the harassment, she had set herself on fire.

8 The learned APP would submit that the post mortem report had opined as under :

“Evidence of multiple injuries over body with burns, the final opinion kept pending for Chemical Analysis, histopathology and accessory examination report”

She submits that based on this report, an offence u/s.302 IPC has been invoked.

9 The learned counsel for the applicant would submit that there is no ingredient which would establish the charge of murder, and by inviting my attention to the Spot panchnama and the Inquest Panchnama, the learned counsel would submit that she had set herself on fire as the kitchen room in which she found, was found to be locked from inside and the statements of witnesses which form part of the charge-sheet, unequivocally state that the applicant and his family was standing outside the house.

10 My attention is invited to a statement of a witness recorded u/s.164 of Cr.P.C and the said witness has stated that at 12.30 p.m, when he was enroute his house, he noticed the applicant and his mother standing outside the house, and when inquired, he was told that the wife of the applicant had locked herself in the kitchen room and before some time, she was screaming. The witness asked them to knock the door and enquired whether there is any window or door to the room, and he was informed that there is a door at the back side. Thereafter, he went on the back side of the house, but the door was closed and smoke was seen emitting from the door. On instructions from the accused no.2, the door was broken to find that the room was filled with smoke and it was dark inside. With the help of the

mobile battery, when an attempt was made to look inside, the wife of the applicant was found in a burnt condition, lying on the floor.

11 I have carefully perused the Spot panchnama where the incident took place, which refer to a kitchen room with an attached bathroom without door. The body of the deceased was found lying in the room along with a can which was smelling like kerosene and a match-box was also found lying nearby. A close perusal of the spot panchnama would reveal that on the other side of the room, there is a door which was bolted from inside. There is also reference to one window on one of the walls which is admeasuring 5 x 2.11 ft length and breadth with three sliding panes without any grill. The panchnama mention that the sliding panes can be closed from outside. From the window to the wall, there is a mention of 12 ft long wooden plank fitted on 2 iron plates on which utensils are found to be arranged. Some of the wares are found to be packed in blue plastic bag, some of which have sulked on account of the flames.

12 Though the learned APP vehemently submit that the applicant was present in the room, and he had set the deceased on fire, there is no material in the charge-sheet, establishing the said fact.

13 On the other hand, the spot panchnama would reveal that from the window, there is a plank on which the utensils are

arranged and they are intact and undisturbed. In any case, if somebody would have entered through the window panes, the utensils would have fallen down or the plank would have been required to be removed, but this not being the position, prima facie, there is no material to show that the applicant has poured kerosene on the deceased and set her on fire. Apparently, it appear that she has committed suicide.

14 The applicant will take the accusation u/s.304B for dowry death. However, even to that effect, the charge-sheet do not specifically point out to the applicant, as he had demanded dowry.

15 The mother-in-law of the deceased was released on bail by referring to the statement of the witnesses that after the incident, the accused were waiting outside the room and both doors to the kitchen were found to be closed and bolted from inside and the doors were required to be broken open.

Recording whether the applicant is involved in commission of murder, is a debatable issue, which will have to be decided at the time of trial, the co-accused was released on bail.

For the very same reasons, the applicant also deserve his release on bail.

The observations made hereinabove are prima facie in nature and limited to the extent of disposal of the present application.

ORDER

- (a) The Applicant – Sangam Shankar Vayale in connection with C.R.No.181/2018 registered with Hill Line Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (c) The Applicant shall attend the Hill Line Police station once in three months on first Saturday between 11.00 am to 12.00 noon.

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)