

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2082 OF 2022**

Nikhil Namdev Shelke	]	
Age:32 years, Occ: Service,	]	
R/o. Mamta Nivas,	]	
550, Swami Samarth Nagar,	]	
Pimpalbhat at Alibag.	]	Applicant
Vs.		
The State of Maharashtra	]	
(At the instance of the P.I. - Alibag	]	
Police Station, Dist: Raigad.	]	Respondent

.....

Mr. Aniket Nikam i/b Mr. Amit Icham, for Applicant.

Mr. P.H. Gaikwad, A.P P for Respondent-State.

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 7th SEPTEMBER, 2022.

PRONOUNCED ON : 8th SEPTEMBER, 2022.

P.C.

1. This is an application for anticipatory bail in respect of C.R. No.114 of 2022 dated 15th May, 2022 registered with Alibag Police Station, District Raigad for the offences punishable under sections 304-B, 306 r/w 34 of the Indian Penal Code.

2. Parents of the applicant viz. Namdev Shelke and Savita Namdev Shelke have already been granted pre-arrest bail by this Court on 20th June, 2022 against whom there are no specific allegations as regards demand of dowry.

3. Prosecution case is summarized as under.

4. Deceased Chaya alias Kanchan was married to applicant on 1st May, 2018. After her marriage, she went to co-habit with her husband at Panvel, New Mumbai and thereafter at Alibag, District Raigad where the applicant was employed in Rashtriya Chemicals and Fertilizers (R.C.F) Limited.

5. In the month of November, 2020 when deceased Chaya came to her natal house for her first delivery, she appraised the first informant - her brother Bhagwan Popat Awhad about the nature and temperament of the applicant. She had informed the first informant that the applicant used to treat her improperly by always scolding her on flimsy reasons. Her in-laws used to ill-treat her on the pretext that she does not do domestic work properly. When deceased Chaya returned to her matrimonial house along with her son, there was no change in the behaviour of the applicant and his parents. Deceased had narrated about conduct of the applicant and her in-laws to the first informant. She had specifically informed him that the applicant used to pass sarcastic remarks even when their son Riyansh used to cry for some reason.

6. Around 15 to 20 days before the alleged incident of suicide by deceased Chaya, first informant had received a call from the applicant who had complained that deceased Chaya was not properly cleaning toilets and, therefore, she picked up quarrel with his mother and sister. The applicant did not listen to the first informant but instead asked him to take deceased Chaya with him. It is also specifically alleged in the report that deceased Chaya had called the first informant informing him about the ill-treatment meted out to her by the first and his parents, *inter alia*, asking her to demand money

from the first informant as the marriage of the first informant was to be solemnized in a few days. The applicant had scornfully taunted the deceased by saying that her parents should give him some amount so that he can purchase clothes and ornaments. Accordingly, younger brother of the first informant had transferred Rs.10,000/- in the account of the applicant through Phone Pay.

7. On the fateful day of 12th May, 2022, around 5.41 p.m, applicant's father had called the first informant informing him that Chaya had committed suicide by consuming poison. The first informant called his sister on her mobile which was picked up by her brother-in-law Ashish, who informed the first informant that Chaya had committed suicide by hanging. The first informant could not believe. Ultimately, when they reached Alibag, they found Chaya hanged with neck to the ceiling fan. She was declared dead on examination by the Doctors.

8. I heard Mr. Nikam for a considerable period as well as learned A.P.P Mr. Gaikwad.

9. Mr. Nikam would argue that when the deceased committed suicide at her matrimonial house, the applicant was not at home. Though the suicide was committed on 12th May, 2022, First Information Report came to be lodged three days thereafter on 15th May, 2022. The Counsel would argue that this itself shows that the applicant was not responsible for the suicidal death of the deceased.

10. Mr. Nikam would argue that ingredients of section 304-B are not attracted for the reasons that there was no earlier demand of any

amount, much less, dowry by the applicant or his parents. What has been stated to be transferred in the account of the applicant by the younger brother of the first informant was an amount of Rs.10,000/-, which was a voluntary transfer of the amount by the first informant owing to his marriage to be solemnized in the near future.

11. My attention is invited to certain bills of shop i.e *Tapi* Designer Sarees and Bridal Lehenga, Resham Bazaar, *Vashi* and Jenny N. Benny dated 4th May, 2022. According to the learned Counsel, following items were purchased;

- (a)Sarees - Lemon Silver;
- (b)Sarees - Royal Mor
- (c)Sarees - Basuri
- (d)Tulshi Saree
- (e)Blouse - 509
- (f)Saree Shahi Mastani
- (g)B Jeans
- (h)B Shirts
- (i)Full Suit

Counsel would submit that those items were purchased in view of the marriage of the first informant and, therefore, it cannot be termed to be a demand of dowry and alleged cruelty or harassment of the deceased by the applicant or his relatives in connection with any demand for dowry. Admittedly, there is no material on record to indicate that soon before the death, deceased Chaya was subjected to cruelty by the applicant. Photographs of the aforesaid items are annexed at Page No.44.

12. Mr. Nikam further argued that relations between the applicant and the deceased were so cordial and hunky dory which is evident from the photographs at Pages No.66 to 68 depicting a visit of the couple with their son to *Kulu Manali (Himachal Pradesh)* in the year 2021.

13. Probably, cause of committal of suicide by the deceased, according to Mr. Nikam would be her failure to clear competitive examinations for which she had appeared. To substantiate his contention, my attention is invited to a document at page No.46 which is an email received by the deceased from thane@time4education.com. He has invited my attention to an email at page No.47 also sent by the deceased to Thane thane@time4education.com. requesting the said Institution to change her centre from Thane to Panvel for the banking classes to be held on 31st March, 2019.

14. There are exchanges of emails between the deceased and other such Institutions. One of the document pressed into service is in respect of online examination for the recruitment of Social Security Assistant in Employees' Provident Fund Organization (EPFO).

15. The deceased appeared to have applied for a post of "Social Security Assistant" in the said Institution. There is also a call letter for the online preliminary examination for the recruitment of Probationary Officers in the State Bank of India which was to be held on 8th September, 2019. Those documents which are at Pages No.46 to 64 indicate that the deceased had been attempting to appear for

various competitive examinations.

16. Learned Counsel has invited my attention to the fact that the applicant had obtained a Postal Life Insurance Policy for deceased Chaya in the sum of Rs.10,00,000/- on 1st February, 2022 which would have matured on 1st February, 2039.

17. It is submitted that all the male members in the family are gainfully employed and working at different places and earning handsome salaries. That may not be and cannot be a ground to argue that there would not be a demand of dowry. Be that as it may.

18. On the other hand, Mr. Gaikwad, learned A.P.P submits that deceased committed suicide within seven years of her marriage at her matrimonial house for demand of money by the applicant and, therefore, he is not entitled to seek pre-arrest bail. He emphasized on the fact that this Court while granting anticipatory bail to the parents of the applicant had observed that allegations of unlawful demand are primarily against the applicant.

19. However, as already stated hereinabove and what has been argued by the learned Counsel for the applicant, *prima facie*, ingredients of section 304-B are not attracted. Of course, these are *prima facie* observations which will not be taken into consideration during the trial on merits. These observations are limited to the aspect of protecting the liberty of the applicant. Since he is gainfully employed in a Public Sector Undertaking, if his liberty is curtailed, there are chances of he losing job.

20. It is informed that son of the applicant is with him. It cannot be lost sight of the fact that due to the untimely death of his wife, applicant too is a sufferer. Thus, having considered the aforesaid facts and also in the absence of any substantial ground being made out by the prosecution to seek custodial interrogation of the applicant, he deserves pre-arrest bail. Consequently, following order is passed;

[a] In the event of his arrest in connection with C.R. No.114 of 2022 registered with Alibag Police Station, District Raigad for the offences punishable under sections 304-B, 306 r/w 34 of the I.P.C, the applicant be released on furnishing a PR bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the Additional Sessions Judge Raigad Alibag;

[b] The applicant shall co-operate with the Investigating Agency, as and when summoned;

[c] The applicant shall not tamper with prosecution evidence or influence any of the prosecution witnesses either directly or indirectly.

21. The application stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]