

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.568 OF 2023

Saleem s/o. Jamalsab Pinjari,
Age 32 years, Occu. Driver,
R/o. Bhosi, Tq. Bhokar, Dist. Nanded .. Applicant

Versus

The State of Maharashtra
Through Bhokar Police Station,
Tq. Bhokar, Dist. Nanded .. Respondent

Mr. Ashish P. Deshmukh, Advocate for Applicant;
Mr. S. P. Sonpawale, A.P.P. for Respondent

CORAM : S. G. MEHARE, J.

DATE : 10-04-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. The applicant has filed application seeking bail in connection with C.R.No.463 of 2022 dated 27.11.2022 registered with Bhokar Police Station, Taluka Bhokar, District Nanded, for the offence punishable under Sections 304B, 498A of the Indian Penal Code.
3. The applicant is husband of the deceased. The deceased married the applicant in the year 2017. They had some

matrimonial discord. It was alleged against the applicant that he was ill-treating the deceased for dowry of Rs.50,000/- for purchasing a new auto-rickshaw. Since she was ill-treated, the deceased was residing with her parents four months before the incident. The first information report reveals that on the day of the incident, the applicant had been to the parents of the deceased and fetched her back and after reaching home within a few hours, she committed suicide. Since there were allegations of demand of dowry and harassment to her, the crime has been registered.

4. The learned counsel for the applicant has vehemently argued that there was no quarrel between the applicant and his wife. The false allegations have been levelled against the applicant that he ill-treated the deceased, for dowry. The general allegations of demand of dowry have been levelled against the applicant. No role is attributed to the applicant. All the witnesses are interested witnesses. The statements of the neighbour about ill-treatment have not been recorded. In absence of basic element of harassment or cruelty soon before the death of woman, Section 304B of the Indian Penal Code would not attract.

5. To bolster his arguments, he relied on the following cases:-

- (i) *Vitthal s/o. Sopanrao Kalbande Versus State of Maharashtra*, [2008(4) Mh.L.J. (Cri.) 657],
- (ii) *Subhash Versus State of Maharashtra*, 2003 All MR (Cri) 1209

(iii) The State of Maharashtra, Through Police Station, Khultabad, District Aurangabad Versus Mustaq Kadu Pathan and others, Criminal Application No.3048 of 2016 dated 12.10.2018 :: Law finder 2019 M.C.R. 383.

6. He would further argue that in the absence of any cogent and reliable evidence, the applicant cannot be detained further.

7. The learned A.P.P. has strongly opposed the application. He would submit that the deceased was in the custody of the applicant soon before her death. There were complaints against him that he was ill-treating the deceased for dowry. One of the neighbourers has stated against the applicant. There can be no direct witness of the mental harassment or the demand of dowry. The first information report reveals that the applicant went to fetch her back, that time the parents opposed but he took the deceased without giving heed to their request. On the date of the incident also the applicant asked her father when he is going to pay Rs.50,000/-. When he showed his inability to pay the amount, he took deceased with him. He prayed to dismiss the application.

8. It is not in dispute that the deceased came to the house of the applicant on the day of the alleged incident and committed suicide within a few hours. Two witnesses of the village of the deceased have stated that they had given the understanding to the applicant that he should not harass the deceased as her

parents were unable to pay him Rs.50,000/-. There are statements of the witnesses, *prima facie* supporting the demand of dowry. Therefore, the ratio in the cases of *Subhash Versus State of Maharashtra (supra)* and *The State of Maharashtra Versus Mustaq Kadu Pathan (supra)*, do not assist the applicant.

9. As far as the case of *Vitthal s/o. Sopanrao Kalbande Versus State of Maharashtra (supra)* is concerned, there was no evidence showing that there was illtreatment / cruelty soon before her death and circumstances of cruelty surfaced only after the victim's death. The said case is also distinguishable on facts.

10. Perused the papers. It appears that *prima facie* evidence is available against the applicant. He was supposed to explain how she died in his custody. The offence is serious. In view of the facts and circumstances of the case, the Court is not inclined to grant bail. Therefore, the bail application stands dismissed.

(S. G. MEHARE)
JUDGE

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