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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.194 OF 2023**

1. Kiran Ramesh Malhotra	...
2. Anjali Ramesh Malhotra	...Applicants
vs.	
State of Maharashtra	...Respondent

**WITH
INTERIM APPLICATION STAMP NO.2847 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.194 OF 2023**

Vishal Satpal Sharma	...Complainant/ Intervenor
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In the matter between

1. Kiran Ramesh Malhotra	...
2. Anjali Ramesh Malhotra	...Applicants
vs.	
State of Maharashtra	...Respondent

Mr. Aditya R. Iyer with Advait Helekar with Nyayosh B. for the Applicants in ABA No.194/2023.

Mr. Amit Karle with Mr.Niranjan Bhavake with Mr. Sameer Tiwari for the Complainant/Intervenor.

Mr. A. R. Kapadni APP for the Respondent-State.

Mr. Yogesh Gaikwad API, Kopar Khairane police station present.

CORAM : S. M. MODAK, J.

DATED : 3RD APRIL 2023

P. C. :

1. Heard learned Advocate for the Applicant Nos.1 and 2, who

are mother in law and sister in law of the deceased-Aarti. She married to one Vijayendra R. Malhotra on 30th January 2016. The said Vijayendra is arrested. These two Applicants alongwith husband of the deceased and father-in-law Ramesh used to cohabit with each other at Ravechi Apartment, Kopar Khairane, Navi Mumbai.

2. On 15th December 2022, the deceased jumped from terrace along with son Arvik. Unfortunately, she succumbed to his injuries, whereas son Arvik survived and at present he is in custody of present Applicants. The first informant – Vishal Sharma is brother of the deceased. On his complaint the police at Kopar Khairne police station registered FIR under sections 306, 498A read with 34 of IPC against in all four persons.

3. During investigation, they have added section 304B of IPC. Now the charge-sheet is filed against all four persons.

4. This Court has granted interim protection to these Applicants as per order dated 20th January 2023. On 23rd January 2023, these Applicants have also attended the concerned police station as directed by this Court.

5. Learned Advocate for the Applicants asked for confirmation of the interim protection on merits as well as on filing of the charge-

sheet. My attention is invited to description of the charge-sheeted accused, amongst them, present two Applicants are also there. Whereas according to learned Advocate for the first informant, during this cohabitation, these Applicants have harassed the deceased on various occasions. Applicant No.2 Anjali Malhotra is not married. The deceased-Aarti was asked to do all household work. When her relatives used to visit the matrimonial house, these Applicants never used to behave with them properly and the deceased was taunted on various occasions. Even the deceased was not allowed to recharge her mobile. The accused never used to allow the relatives of deceased to meet her or son Arvik. Even on the festival of Bhai-dhooj in the year 2021, the first informant visited the matrimonial house, he was not allowed to enter matrimonial house.

6. Due to all this harassment Aarti has lost her weight. On 5th December 2022, the accused persons quarrelled with the deceased on account of not making available water bottle for the son Arvik.

7. Learned Advocate for the first informant invited my attention to various sms exchanged by the deceased with her mother. They are from page 13 to page 51.

8. My attention is also invited to supplementary statement given by the first informant on 9th January 2023, and feeling is that the police have recorded it belatedly.

9. Learned Advocate for the first informant also relied upon the statement given by minor son Arvik on 13th December 2022. It is on page 16 of the charge-sheet. He has said about quarrel in between deceased on the one hand and accused persons on the other hand and recent quarrel was on account of not making water bottle available.

10. As against this learned Advocate for the Applicant invited my attention to various photographs annexed to the Application and statement of treating doctor. Some of these photographs pertain to functions organised on 4th December 2022, on the auction of birthday of arrested accused. Whereas doctor Smt. Archana Dombe, in the statement on 5th January 2023, mentions about deceased Aarti visiting her clinic for treatment. She has stated that she did not notice deceased Aarti under any mental pressure and she has never disclosed about harassment against accused persons. Even she has said that the deceased was not suffering from any serious ailment.

11. So we have got sms contending certain messages sent by the

deceased to her mother whereas we have got photographs taken on certain functions showing entire family and deceased also. It is true that in these messages, deceased Aarti has said about that she was not treated properly on various occasions. It is true that in matrimonial life disputes do take place. For the offence under section 498A of the IPC, it is not every cruelty which is punishable but at the most falls within explanation to section 498 of IPC. Furthermore, every act of suicide is not offence unless it is abated by some one. The act will fall within purview of section 304B of the IPC only when there is harassment seen before death and it is on account of non fulfillment of dowry demand.

12. I am inclined to confirm the interim protection. It is for the reason that Arvi is alive. It appears that the police do not want custody of these Applicants. Furthermore, the police do not wait to recover any articles from these Applicants. The Court has to ultimately balance rights of the parties. The Court can understand feelings of the first informant and other relatives but ultimately the Court has to see that custody of the Applicants is required for interrogation or not.

13. Considering aforesaid facts and just because there are sms

contending harassment to the deceased, the Court cannot consider it because there is also other side of story, it is reflected in the photographs and statement given by the Medical Officer. Hence, the following order is passed :

O R D E R

- (a) Interim protection granted by this Court on 20th January 2023 to Applicant No.1-Kiran Ramesh Malhotra and Applicant No.2-Anjali Ramesh Malhotra is confirmed.
 - (b) The Applicants shall not threaten the prosecution witnesses or allure them in any manner
 - (c) The Applicants shall give attendance to the Kopar Khairane police station on coming Monday and Friday from 10 am to 12 noon.
14. Anticipatory Bail Application is disposed of accordingly. Interim Application is also disposed of.
15. These are my prima facie observations and the trial Court may not be influenced by that.
16. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]