



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1406 OF 2023**

Sandipan Misal	...	Applicant
versus		
State of Maharashtra and Anr.	...	Respondents

Ms Divya Kangane i/by Krishna Holambe Patil, for Applicant.
Ms. Anamika Malhotra, aPP for State.
Ms. Trupti M. Khamkar, for Respondent No.2.
Ms. Trupti Shelke, API Kalamboli Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 18 DECEMBER 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.67 of 2023 registered with Kalamboli Police Station for an offence punishable under Section 306 of the Indian Penal Code.
3. When the application was listed before this Court on 6 June 2023, this Court was persuaded to grant interim bail to the applicant observing, inter alia, as under :

“4. Learned Advocate for the applicant has placed on record copy of the application under Section 13(B) of the Hindu Marriage Act, 1955, which appears to have been filed on 4th March 2023. He has also placed on record copies of complaint filed by him with Commissioner of Police, Thane, dated 10th March 2023, expressing apprehension of suicide of the deceased.

5. On perusal of the first informant report and the statements of the witnesses, it appears that the allegations of harassment due to non-payment of dowry are vague. No details of month or week of alleged demands are mentioned. Additionally, filing of application under Section 13(B) of the Hindu Marriage Act, 1955 and the complaint dated 13th March 2023 before the unfortunate death of the deceased, entitles the applicant for interim protection.”

4. Learned APP submitted that in the intervening period, post completion of investigation, charge sheet has been lodged.

5. Learned Counsel who has been appointed to espouse the cause of Respondent No.2 resisted the prayer for pre-arrest bail. An Affidavit in Reply is filed on behalf of Respondent No.2 to oppose the prayer for pre-arrest bail. In the Affidavit, Respondent No.2 has affirmed that the institution of the marriage petition for divorce by mutual consent under Section 13(B) of the Hindu Marriage Act, 1955 and the alleged complaint lodged by the applicant with the Police Commissioner, Thane, making allegations against one Police Constable appear to be of doubtful character.

6. Learned Counsel for Respondent No.2 submitted that the death of the deceased by suicide itself appears to be doubtful as nothing was found in the room in which the deceased allegedly died by suicide.

7. I have perused the postmortem report. Autopsy Surgeon has not found any other external injury or mark of violence on the person of the deceased, apart from legiture mark. Prima facie, at this stage, there is no material to indicate that the death of the deceased was homicidal. The submission on behalf of the Respondent No.2

that the factum of the filing of the marriage petition is itself doubtful, as the deceased had not disclosed about the same to the first informant, and there are averments in the marriage petition which are patently abundantly incorrect, are the matters which can be considered at the stage of trial. Ex-facie, it appears that the marriage petition was filed and affirmed before the verifying authority on 1 March 2023. In the circumstances, the fact that there was a martial discord between the applicant and the deceased becomes evident.

8. The learned Counsel for Respondent No.2 is justified in canvassing a submission that the veracity of the allegations of the alleged relationship outside the marriage of the deceased with the said police constable cannot be delved into. However, the fact that before the occurrence, on account of marital discord, a Petition for divorce by mutual consent was filed and the applicant had lodged a complaint with Police Commissioner, make out a prima facie case in favour of the applicant. In the letter addressed to the Police Commissioner, the applicant has made allegations against one Police Constable of enticing away the deceased on the pretext of securing a job in the Police Department. Since the investigation is complete and the applicant has been on interim bail, I am impelled to hold that the custodial interrogation of the applicant is not warranted. Thus, the order of interim bail deserves to be made absolute.

9. Hence, the following order :

ORDER

(i) The order of interim bail dated 6 June 2023 is made absolute on the terms and conditions incorporated therein.

(ii) In addition, the applicant shall regularly attend the proceedings before the jurisdictional Court.

(iii) The application stands disposed.

(iv) It is, however, clarified that the observations are confined to the consideration of entitlement for pre-arrest bail and the trial Court shall not be influenced by any of the observations in further proceedings.

(N.J.JAMADAR, J.)