

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 2375 OF 2022

Siraj Mustafa Khan	... Applicant
v/s.	
The State of Maharashtra	 Respondent

Mr. Nikhil Mengde a/w. Mr. Siddhikesh Ghosalkar,
Mr. Siddhesh Dalvi and Mr. Kunal Savaskar
for the Applicant.
Mrs. A.A. Takalkar, APP for the State.
Mr. Gole, PSI, Aarey Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 28th JUNE, 2023.

P.C. :-

. This is an Application under section 439 of Cr.PC. filed by the
aforesaid Applicant who is facing trial in C.C.No.6802246/PW/2022
pending on the file of Metropolitan Magistrate's Court, Borivali,
Mumbai. The said case arises from C.R.No.165/2022 registered with
Aarey Sub Police Station, Mumbai for offences punishable under
sections 306, 323, 498-A, 504, 506 r/w. 34 of the Indian Penal Code.

2. Heard learned counsel for the Applicant and learned APP for the
State. I have perused the records and considered the submissions
advanced by the learned counsel for the respective parties.

3. The marriage of the Applicant and Heena, the daughter of the first informant was solemnized on 28/06/2015. They have three children from the said wedlock. Said Heena, the wife of the Applicant committed suicide on 10/04/2022. The mother of the deceased lodged the FIR on 13/06/2022 alleging that the Applicant and his family members had subjected her daughter Heena to cruelty. She has stated that since the year 2019, the relationship between her daughter and the Applicant herein were strained and that they that they used to abuse and assault her. She further states that her daughter Heena had committed suicide because of the ill-treatment meted out to her by the Applicant and his family members.

4. On the basis of the aforesaid allegations, C.R.No.165/2022 came to be registered with Aarey Sub Police Station, Mumbai for offences as stated above. Upon completion of the investigation, charge sheet came to be filed against the Applicant and his family members.

5. Learned counsel for the Applicant states that the allegations made in the FIR as well as the material on record does not prima facie constitute abetment within the meaning of section 107 of the Indian

Penal Code. He further submits that material on record does not prima facie indicate that the Applicant and others had subjected Heena to cruelty within the meaning of section 498-A of the Indian Penal Code. He submits that the Applicant is in custody since 14/04/2022 and that charge is not yet framed and trial is not likely to conclude in near future.

6. Per contra, learned APP submits that material on record particularly the complaint filed by the deceased prima facie reveals that the Applicant and his family members had subjected the deceased Heena to cruelty. He contends that the material on record sufficiently indicate that the deceased had committed suicide because of the cruelty meted out to her and hence, there is prima facie material on record that the Applicant herein had abetted the deceased to suicide.

7. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. The FIR reveals that the marriage of the Applicant and the deceased Heena was solemnized in the year 2016. They have three children from the said wedlock. The facts narrated in the FIR indicate

that :-

(a) The Applicant had no fixed income and that he would not give money to the deceased to meet the household expenses for which reasons there used to be constant quarrel between them.

(b) Pursuant to the lock down declared in March, 2020, the Applicant had absolutely no work and that he used to quarrel with the deceased whenever she demanded money to meet household expenses.

(c) The Applicant and his family members had pledged the gold ornaments of the deceased – Heena due to which there used to be constant quarrels between them.

(d) The deceased had started working in filmcity. The Applicant and his family members would assault the deceased since she was unable to cope up with the household work.

9. The NC complaints which were lodged by the deceased also prima facie indicate that the quarrel between the Applicant and the deceased-Heena was mainly on account of not giving her sufficient money to meet the household expenses. The facts narrated in the FIR do not indicate that the Applicant had subjected Heena to harassment with a view to coerce her or any person related to her to meet any

unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demand. The conduct of the Applicant does not fall within the category as defined in clause (a) of Explanation to Section 498-A which requires wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.

10. The conduct of the Applicant in abusing and assaulting the deceased though not justifiable, the same cannot be considered as cruelty within the meaning of Explanation to clause (a) of section 498-A. The material on record also does not indicate that the Applicant herein had abetted or instigated deceased-Heena to commit suicide. Hence, prima facie, ingredients of abetment within the meaning of section 107 of the Indian Penal Code are not made out. The Applicant is in custody since 14/04/2022. Charge is not yet framed. Considering the large pendency, the trial is not likely to commence in near future. In such circumstances, this is a fit case to exercise discretion under section 439 of Cr.P.C. Hence, the Application is allowed on the following terms and conditions :-

- (i) The Applicant who is facing trial in C.C.No.6802246/PW/2022 pending on the file of Metropolitan Magistrate's Court, Borivali, Mumbai arising from C.R.No.165/2022 registered with Aarey Sub Police Station, Mumbai, is ordered to be released on bail on furnishing P.R. bonds in the sum of Rs.40,000/- with one or two solvent sureties in the like amount ;
- (ii) The Applicant shall report to Investigating Officer of Aarey Sub Police Station, Mumbai on 1st Monday of every month till framing of the charge ;
- (iii) The Applicant shall not interfere with the prosecution witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (v) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

11. Bail Application stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)

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