

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3302 OF 2023**

Asiya Rais Baig @ Asiya Mohd.

Gulam Jilani and Ors.

... Applicants

versus

The State of Maharashtra

... Respondent

Mr. Tushar Kochale with Dr. Ajay Jankar, Bhavika Solanki i/by Mr. Akshay Bhole, for Applicants.

Smt. A.A.Takalkar, APP for State.

Mr. Surya Das, for Intervener.

Mr. Mahadev S. Shirsat, PI, Shahunagar Police Station, present.

CORAM: N.J.JAMADAR, J.

DATE : 1 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.296 of 2023 registered with Shahunagar Police Station for the offences punishable under Sections 306 read with Section 34 of the Indian Penal Code.
3. The marriage of the applicant No.1 was solemnized with Mohd. Gulam, the deceased son of the first informant in the year 2018. Their martial life was afflicted with discord. The applicant No.1, the first informant alleged, was not willing to cohabit with the deceased till the first informant and his wife were thrown out of matrimonial home. The applicant No.1 had left the matrimonial home along with the son of the deceased.

4.. The first informant alleged that the applicant No.1 and her relatives threatened the deceased with dire consequences, including that of prosecution and incarceration in prison, if the deceased did not cohabit with the applicant No.1, on her terms. A false FIR was lodged by the applicant No.1 being No.217 of 2023 for the offences punishable under Sections 498A, 323, 324, 504, 506 read with Section 34 of the Indian Penal Code. On 2 October 2023 when the deceased had visited the applicant No.1 to persuade her to rejoin the matrimonial home, he was thrown out of her house and humiliated. On that day, the deceased had allegedly expressed his helplessness and desire to commit suicide. On the very day, the deceased allegedly consumed poison and, eventually, succumbed on 6 October 2023. Hence, the report.

5. The learned Counsel for the applicants submitted that even if the allegations in the FIR are taken at par, a case of abetment to commit suicide cannot be said to have been made out. It was submitted that the applicant No.1 had already lodged FIR on 25 July 2023 as she was subjected to matrimonial cruelty.

6. Learned APP invited the attention of the Court to the alleged suicide note and the statement of the deceased recorded on 2 October 2023. It was submitted that the applicant No.1 and her relatives subjected the deceased to an unbearable harassment and left him with no option but to commit suicide.

7. Learned Counsel for the first informant also supplemented the submissions of the learned APP.

7. I am afraid to accede to the submissions on behalf of the prosecution. Evidently, on account of the martial discord, the applicant No.1 had been residing at her parental home. The martial discord had reached to such a pass that the applicant No.1 had lodged a report of matrimonial cruelty against the deceased and his relatives. It seems that the reluctance of the applicant No.1 to cohabit with the deceased along with his parents was allegedly the cause for the matrimonial discord. Even if the case is taken at par, and it is assumed that the applicant No.1 refused to come back to matrimonial home till the parents were thrown out of matrimonial house, that would not prima facie amount to instigation or intentional aid so as to fall within the ambit of abetment under Section 107 of the Penal Code.

8. In any event, the custodial interrogation of the applicants does not seem to be warranted to facilitate further investigation. The applicant No.1 is a woman and the other applicants are the relatives of the applicant No.1. They have a fixed place of abode. Possibility of fleeing away from justice appears to be remote. I am, therefore, inclined to exercise the discretion in favour of the applicants.

9. Hence, the following order :

ORDER

(i) In the event of the arrest of the Applicants – Asiya Rais Baig @ Asiya Mohd. Gulam Jilani, Irshad Rais Baig @ Irshad Bano, Naziya Fatima Ajaz Sayed @ Naziya Khan, Mr. Mohd. Siptain Raza Beg, Mr. Mohd. Hasnain Beg Rais Beg @

Hasnain Mirza in connection with C.R.No.296 of 2023 registered with Shahunagar Police Station, they be released on bail on furnishing a PR bond in the sum of Rs.30,000/- each with one or two sureties in the like amount.

(ii) The Applicants shall co-operate with the investigation and report to Shahunagar Police Station on 8th, 9th and 11th December 2023 in between 10.00 a.m. to 1.00 p.m., and thereafter, as and when directed.

(iii) The Applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the prosecution witnesses or any of the persons acquainted with the facts of the case.

(iv) The Applicants shall regularly attend the proceedings before the jurisdictional Court.

(v) The application stands disposed.

(vi) 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.)