

Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 3438 OF 2023

Mithileshdevi A. Mishra

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Shekhar Bhise with Ms. Vrushali Patil, for Applicant.

Ms. Anamika Malhotra, APP for State.

Mr. Sanjay Yadav, PSI, Kapurbawdi Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 11th DECEMBER, 2023

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) This application is preferred for pre-arrest bail in connection with C.R. No. 261 of 2022, registered with Kapurbawadi police station, Thane, for the offences punishable under Sections 498-A, 304-B and 406 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

3) The marriage of the daughter of the first informant was solemnized with the son of the applicant on 21st May, 2021. The first informant alleged that the applicant used to harass the deceased on the count that she was not doing household work and not speaking with rest of the family members. The deceased was brought to her parental home. The deceased was suffering from Epilepsy. It is alleged that even after payment of a sum of Rs.3,00,000/- to the applicant and the co-accused, they did not provide medical treatment to the deceased. Thus, the deceased was being treated at Nair Hospital.

4) It is alleged that in the month of March, 2022, the deceased informed the first informant that the applicant had assaulted her. It seems in the month of July, the deceased was brought to her parental home and, thereafter, admitted M. V. Desai Hospital, Malad. The first informant alleged at that time there were marks of injuries on the person of the deceased. The deceased passed away on 14th July, 2022, while she was admitted at M. V. Desai Hospital. Hence, the report.

5) The learned Counsel for the applicant submitted that the FIR singularly lacks allegations of demand of dowry. In fact, the deceased was suffering from Epilepsy and was under treatment

for a long time. Thus, the death of the deceased cannot be said to have occurred in unnatural circumstances. It was further submitted that the husband of the deceased was arrested and has since been released on bail. Investigation is complete and the charge-sheet has been lodged.

6) The learned APP invited the attention of the Court to the external injuries, noted on the person of the deceased, in Column No. 17 of the PM report. The learned APP, fairly invited the attention of the Court to the opinion of the Medical Officer dated 21st September, 2022, wherein it was opined that the injuries were fresh and could have been sustained by the deceased during her hospital stay because of restraining the patient during the episode of seizure. Those injuries were not sufficient to cause death of the deceased in the ordinary course of nature.

7) In view of the aforesaid nature of the medical evidence, coupled with the allegations in the FIR, which prima facie indicate that the deceased had been suffering from Epilepsy and was under treatment, the question as to whether the deceased died in unnatural circumstances, appears to be a matter for adjudication at the trial. In any event, since the investigation is

complete and charge-sheet has been lodged, custodial interrogation of the applicant does not seem to be warranted for an effective investigation. I am, therefore, impelled to exercise the discretion in favour of the applicant.

8) Hence, the following order:-

ORDER

I) In the event of arrest of the applicant in connection with C.R. No. 261 of 2022, registered with Kapurbawadi police station, Thane, for the offences punishable under Sections 498-A, 304-B and 406 read with Section 34 of Indian Penal Code, 1860, the applicant be released on bail on executing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

II) The applicant shall co-operate with the investigation and attend Kapurbawadi police station, Thane on 18th and 19th December, 2023 in between 10.00 am to 1.00 pm and, thereafter, as and when directed by the Investigating Officer.

III) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first

informant and any of the persons acquainted with the facts of the case.

IV) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

V) The application stands disposed.

[N. J. JAMADAR, J.]