



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 BAIL APPLICATION NO. 357 OF 2024

1. Nasim Begum Shaikh Jalal
2. Shaikh Jalal Shaikh Karim

..APPLICANTS

-VERSUS-

The State of Maharashtra

..RESPONDENT

Advocate for Applicants : Mr. Shinde Dhananjay M.

APP for Respondent/State : Mr. Satish A. Gaikwad

Advocate assisting to the P.P. : Mr. A.A. Yadkikar

....
WITH

CRIMINAL APPLICATION NO. 1415 OF 2024

IN

BAIL APPLICATION NO. 357 OF 2024

Shaikh Mehmood Abdul Rahim

..APPLICANT

-VERSUS-

The State of Maharashtra
and others.

..RESPONDENTS

Advocate for applicant : Mr. A.A. Yadkikar

Advocate for Respondent nos.2 and 3: Mr. Shinde Dhananjay M.

APP for Respondent/State : Mr. Satish A. Gaikwad

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 3rd MAY, 2024.

PER COURT :-

1. For the reasons stated in the application, Criminal Application No.1415 of 2024 for assisting to the prosecution is allowed.

2. The applicant is seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicant has been arrested in connection with crime No.310 of 2023 registered with Itwara Police Station, Dist. Nanded, for the offences punishable under sections 302, 304-B, 498-A read with 34 of the Indian Penal Code and under sections 3 and 4 of the Dowry Prohibition Act.

3. It is averred in the report that the marriage of deceased Saba Begum was performed with Shaikh Aslam Shaikh Hamit on 14.10.2022. Applicant no.1 is the sister of Shaikh Aslam and applicant no.2 is her husband. After the marriage, Saba Begum started to cohabit with her husband. The husband and other co-accused were saying that she is black and short. Her hairs are also short. She is not able to cook food. They were disliking her.

4. In the marriage, dowry of Rs.80,000/- was settled to be paid, however, an amount of Rs.50,000/- was paid and remaining dowry amount of Rs.30,000/- was not paid because of poor economic condition of the parents of Saba Begum. The applicant and other accused started to demand that dowry. They were saying that in marriage the parents of the deceased have not given Fridge and Washing Machine. Saba Begum told that fact of cruelty to her parents. Her father tried to convince her husband and family members that he is not having money to pay the remaining amount

of dowry. He therefore tried to convince them that after he get money, he will pay that amount, but the family members of Saba were not paying any heed to that request. Four months before the incident, Saba was dropped to her parents house by her husband and she was warned that unless she brings the money, she should not come to house. While she was in her parents house, she told her parents that for bringing the money, her husband caught hold her hairs and beaten her with stick and caused injury to her back by burning cigarette. He said that, "काली रांड तू मेरेकों पसंद नहीं. तूने पैसे नहीं लाए तो हम तुझे खतम कर देंगे". Frequently she was assaulted by utentials in the house. When she bring the food for eating, her father-in-law throw that food on her face. Her brother-in-law used to say that "जबसे शादी करके हमारे घर में आई तब से हमारे घर की बरकत चली गई". Applicant Nasim Begum, who was residing in the same lane along with her husband used to treat Saba Begum with cruelty. She used to say her mother that "तू तेरे दिल पे ऐसी होडी बकरी बहू कर के लाई. ईससे जादा अच्छी लड़की मिलती थी और दहेजनी जादा लाती थी". The applicants were frequently beating Saba Begum and saying her that she will be set ablaze if she failed to pay the remaining amount of dowry. Daughter of informant Saba Begum used to say that do not sent her to the matrimonial home, otherwise they will set her ablaze. Matter was thereafter settled on 10.08.2023

in the presence of some relatives. They were convincing Saba for cohabitation. On 19.09.2023, the son of informant has went to the house of deceased for paying an amount of Rs.10,000/- and he paid that amount of Rs.10,000/- to the applicant no.1. Thereafter, son of informant told that the deceased Saba was treated frequently with cruelty.

5. On 04.10.2023 at about 8.40 p.m. applicant no.2 made phone call to the informant and told that Saba slept at 1.00 p.m. and she did not woke up yet. She is not speaking. Therefore, she was taken to the civil hospital. Then all of them went there and saw that Saba is dead and there were so many injuries around her person. There were burn injuries to her face, neck, wrist, back and legs. The report was lodged on the second day of incident.

6. The learned advocate for the applicants submits that the applicants are falsely implicated in the crime because they are residents of the same locality. There is no such material evidence against them. The applicants have roots in the society. They will not flee away from the trial. Trial would take long period. The learned advocate lastly prayed to allow the application on the principle that bail is rule and jail is exception.

7. The learned APP for the respondent-State and learned advocate assisting to the prosecution strongly opposed the application and submitted that incident took place in the house of the

applicants. Saba Begum sustained not only burn injuries to infer her suicide but there are cut injuries to her. The statement of neighbourer tenant of the husband of Saba shows that both the applicants were residing there and they were coming frequently . They were involved in this serious crime. The postmortem report shows 19 burn and cut injuries. Considering serious nature of crime, strong prima facie evidence against the applicants, it is lastly prayed to reject the application.

8. Perused the charge-sheet, particularly postmortem report and statement of the tenant of the husband of Saba, who heard the cry of Saba at the relevant time. The statement is very specific which prima facie constitute the ingredients of section 498-A of the Indian Penal Code. The applicants are admittedly residing in the one and the same village and statement of this witness recorded by the Police clarifies that the applicants are involved in the said crime. No doubt, the statement of said witness recorded under section 164 of Criminal Procedure Code shows that on 04.10.2022 she had seen that applicant nos.1 and 2 were carrying Saba from one room to another room. That time on her inquiry they said that she is suffering from illness. Thereafter, the incident took place.

9. No doubt at this stage meticulous consideration of evidence is not necessary. However, the incident took place in the house of the husband of Saba and there is strong material against

the applicants and other accused. Considering all these facts and ratio laid down in the cases of ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 SCC 559*** and ***Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, (1987) 2 SCC 684***, the applicants are certainly not entitled for bail. Considering all these reasons the application deserves to be rejected. Accordingly it is rejected.

10. The incidents of causing cruelty to the married woman are increasing. However, in our country, there is no such social institution, who is conducting the training of pre-marriage counselling for the husband and wife to control their emotions. Institution like Tata Social Sciences etc., Department of Social Justice of the State Government has to consider this aspect that before the marriage, the special training/counselling as to how to behave with each other is necessary. Our culture is to continuously love after marriage by excusing mistakes of each other. It is a behavioural pattern of our society which has built the family institutions for many thousand years.

11. It is made clear that the observations made in this order are prima facie in nature and the trial court shall not get influenced while conducting the trial.

(SANJAY A. DESHMUKH, J.)