



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 934 OF 2024

1. Sugarabi w/o. Latif Shaikh,
Age 61 years, Occu. Household,
R/o. Singhi, Taluka Gangapur,
District Aurangabad
2. Almas w/o. Taher Shaikh,
Age 35 year, Occu. Household,
R/o. As above .. Applicants

Versus

1. The State of Maharashtra
2. The Superintendent of Police
Aurangabad .. Respondents

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Mr. Nilesh S. Ghanekar, Advocate for Applicants;
Mr. S. B. Narwade, A.P.P. for Respondents No.1 and 2;
Mr. R. B. Dhakane, Advocate for Assist to A.P.P.

CORAM : S. G. MEHARE, J.

DATE : 25-07-2024

PER COURT :-

1. Heard the learned counsel for the applicants, the learned A.P.P. for respondents No.1 and 2 and the learned counsel for the victim's father.
2. The applicants seek pre-arrest bail in Crime.No.0248 of 2024 registered with Gangapur Police Station, District Aurangabad, for

the offences punishable under Sections 304B and 504 read with Section 34 of the Indian Penal Code.

3. The applicants are mother-in-law and sister-in-law of the deceased. The deceased married Saddam around six years back. The informant's daughter, on her own, consumed a poisonous substance. Her husband admitted her to the hospital. However, she died. The first information report reveals that the parents of the deceased gave eight tolas gold ornaments. When the marriage was performed, her husband was a temporary wireman in M.S.E.B. Six months before he was confirmed. Thereafter, all the accused, including present applicants, started ill-treating the deceased for money and motorbike. It has been alleged that she was harassed for that, and she told her father about the harassment two to three times. On the day of the incident, she made a phone call to the first informant/her father and said that she had been harassed since morning and that she could not tolerate cruelty and harassment. She was going to do something wrong in her life. The father of the deceased tried to convince her. He started to proceed to the house of the applicants. However, at 2 p.m., he received a message from her cousin's father-in-law that she consumed poison and her husband took her to the hospital.

4. The contention of the applicants is that there was no such demand at all. However, a false report has been lodged. They have

been arraigned as accused of only being close relatives of her husband. She was treated well for six years. Considering the allegations levelled against the applicants, the prosecution has no explanation for what purpose the custodial interrogation is essential. They are not hardened criminal. Nothing is recovered from them. They can not tamper with the prosecution witnesses. The so-called poison container has also been recovered. Even if police custody is granted, nothing will be discovered from them. Both are women having no antecedents. Hence, they may be granted pre-arrest bail.

5. Learned counsel for the victim has vehemently argued that the contents of the first information report constitute the offence under Section 304B of the Indian Penal Code. Reading Section 133(b) of the Evidence Act, the presumption runs against the applicants. The offence is punishable for more than seven years. It was a case of ill-treatment to the deceased for dowry soon before the incident. Since the presumption is there, they would not be granted anticipatory bail. Learned A.P.P. has also argued on the same lines.

6. The question is, in what circumstances is the arrest essential?

7. Section 41 of the Code of Criminal Procedure deals with when police may arrest anyone without a warrant. For arrest,

certain conditions have to be fulfilled. First of all, the police officer must have reason to believe that the contents of the complaint satisfy that such person has committed a cognizable offence. When he satisfies himself that such arrest is necessary, he should proceed to arrest. Suppose he is satisfied that preventing any further offence is essential for some offence or for proper investigation. In that case, the custodial interrogation is essential, or the accused may be arrested to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner or to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or the police officer; or as unless such person is arrested, his presence in the Court, whenever required, cannot be ensured. The police officer shall record his reasons in writing while making such an arrest.

8. The purpose of custodial interrogation would be as provided under Section 41(1) of the Cr.P.C. The arrest of a person is not a mechanical process. The investigating Officer has to apply mind and satisfy that there may be a possibility of violating any of the conditions mentioned in Section 41(1)(2) of the Cr.P.C. Section 41-A of the Cr.P.C. has been inserted with effect from 01.11.2010. It has been provided that in all cases where the arrest of a person is not required under sub-section 1 of Section 41, a notice should be

issued to the concerned directing the person against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspension exists of having committed a cognizable offence before or on such other place specified in the notice. Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court.

9. In this application, the Investigating Officer has opposed the application on the ground that the offence is serious. If the applicants would be released on bail, there is an apprehension of tampering with the prosecution witnesses. Since the day of the crime, they are absconding. If they are granted bail, there may be serious dispute in the family of the deceased.

10. The sole purpose of arrest is to prevent the accused from acting as provided in the condition imposed in Section 41(1) of the Cr.P.C. Bare allegations of serious offence may not always be a ground to arrest as the offence is cognizable and punishable with imprisonment for more than seven years. In a large number of matrimonial disputes, many accused were arrested without the need of their custodial interrogation. Therefore, the Legislature has to insert Section 41-A of the Cr.P.C. In the offence, particularly in

matrimonial offences, the custodial interrogation is usually not essential. This is a case of suicide. No weapon is used in the crime. The investigating Officer has mechanically opposed the application by reproducing the condition under Section 41 (1) of the Cr.P.C. The applicants are not hardened criminals. There is no complaint that they are tampering with the witnesses. As far as a presumption under Section 113-A of the Evidence Act is concerned, it applies after establishing the charges against the accused. For that purpose, the trial is to be opened. The accused, at this juncture, could not open their defence. The accused may bring the circumstances from the cross-examination of the witness to rebut the presumption. In short, application of the presumption under Section 113-A of the Evidence Act could not be brought into operation at the very early stage of granting bail. Mere ingredients of the serious crime in the first information report were also not the reason for the arrest. In this peculiar case, the case is very simple that the deceased consumed the poison, and immediately thereafter, the husband took her to hospital. Her parents reached there. Police arrested the husband and father-in-law. The so-called bottle lying in the house has also been recovered. Considering this fact, this Court is of the view that there was no material before the Investigating Officer to satisfy that the arrest of the applicants is essential. In such circumstances, he ought to have complied with Section 41A of the Cr.P.C., which he ultimately did not do.

11. After going through the allegations, family background, and the recovery of the bottle containing insecticide, which was not the weapon, this Court is of the view that the custodial interrogation of the applicants is not essential. Hence, they deserve pre-arrest bail. Hence, the order:-

ORDER

- i) The application is allowed.
- ii) In the event of arrest, applicant Nos.1 - Sugarabi w/o. Latif Shaikh and No.2 - Almas w/o. Taher Shaik, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety in the like, on the following conditions :
 - (a) They shall not tamper with the prosecution witnesses, if any.
 - (b) They shall attend the Police Station as and when called on written notice by the Investigating Officer.

**(S. G. MEHARE)
JUDGE**

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