

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.179 OF 2024

Asif Usman Shaikh

....Applicant

vs.

The State of Maharashtra

...Respondent

AND

BAIL APPLICATION NO.168 OF 2024

Sohel Usman Shaikh

....Applicant

vs.

The State of Maharashtra

...Respondent

....

Mr. Salman Khan, for the Applicants.

Mr. S.R. Agarkar, APP, for State/Respondent.

....

CORAM : N.J. JAMADAR, J.

DATE : 15th JANUARY, 2024

P.C. :

1. The applicants/brothers, who are arraigned in C.R. No.235 of 2022, registered with Bhoiwada Police Station, Thane, for the offences punishable under Section 306, 498-A, 354 r/w. Section 34 of the Indian Penal Code, 1860, have preferred these applications for bail. Afrin (the deceased) was the daughter of the first informant. Her marriage was solemnized with Asif - the applicant in Bail Application No.179 of 2024, on 27th May, 2016. Soh-el-the applicant in Bail

Application No.168 of 2024, is the brother-in-law of the deceased. The first informant alleged that after few years of marriage, the applicants and other relatives of applicant no.1 -Asif started harassing the deceased. The accused made the deceased to get the grocery and essential consumables from her mother. When she could not, she was subjected to ill-treatment. The deceased stayed for a while at her parental home. In the month of September 2022, the deceased was taken back to her matrimonial home. However, the applicant and the co-accused continued to subject the deceased to cruelty. The applicant - Sohel allegedly had an evil eye on the deceased.

2. On 13th November 2022, the first informant was apprised that the deceased had sustained burn injuries. The deceased had narrated to the first informant that she was unable to bear the continuous harassment and ill-treatment at the hands of the applicant and the co-accused. Therefore, she set herself ablaze. Eventually, the deceased succumbed to the injuries.

3. Learned Counsel for the applicant submitted that qua Sohel - the applicant in Bail Application No.168 of 2024, the only allegation is that the applicant had an evil eye on the deceased and attempted to outrage her modesty while she was alone at home.

4. The learned Counsel further submitted that on the aspect of nature of death, there is a material inconsistency in the version of the

first informant. In her statement recorded before the J.J. Marg Police Station, the first informant had stated that she was informed by the deceased that the applicant and the co-accused had set her on fire.

5. I have perused the statement dated 13th November, 2022 recorded by J.J. Marg Police Station, when the deceased was brought to J.J. Hospital.

6. The learned APP submitted that the said statement constitutes a dying declaration and, therefore, the applicants do not deserve to be enlarged on bail.

7. Prima facie, there is a material inconsistency in the version of the first informant as to the declaration allegedly made by the deceased as regards the circumstances of the transaction leading to her death. In view of the material inconsistency, in my view, a prima facie case is made out as the homicidal or suicidal nature of the death is in the arena of uncertainty, which can only be resolved by evidence at the trial.

8. It seems that the genesis of the dispute is in marital discord. There are no specific allegations of unlawful demand and harassment of the deceased in order to coerce the deceased to meet the unlawful demand. The allegations qua the applicant – Soheli, appear to be of vague and general nature.

9. The applicants are in custody since 15th December 2022. Investigation is complete. At this stage, further detention of the applicants does not seem warranted.

10. Therefore, the following order is passed:

: O R D E R :

- (i) The applications are allowed.
- (ii) The applicant - Asif Usman Shaikh (in Bail Application No.179 of 2024) and the applicant - Sohail Usman Shaikh (in Bail Application No.168 of 2024) be released on bail in C.R. No.235 of 2022, registered with Bhoiwada Police Station, Thane, on furnishing a P. R. Bond of Rs.30,000/- each with one or more sureties in the like amount each;
- (iii) The applicants shall mark their presence before the concerned police station on the first Monday of every alternate month in between 10.00 am. to 12.00 noon for a period of two years or till conclusion of the trial, whichever is earlier;
- (iv) The applicants shall not tamper with the prosecution evidence. The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer;

- (v) On being released on bail, the applicants shall furnish their contact numbers and residential addresses to the investigating officer and shall keep him updated, in case there is any change;
- (vi) The applicants shall regularly attend the proceedings before the jurisdictional Court;
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicants and the trial Court shall not be influenced by any of the observations made hereinabove;

Applications disposed.

(N.J. JAMADAR, J.)