

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1399 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Hasib Salim Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Bablu Jumman Shaikh, for the Applicant.

Mr. S. R. Aagarkar, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

DATED: 16th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. By this application under Section 439 of the Code of Criminal Procedure, 1973 ("the Code") the applicant seeks to be enlarged on bail in CR No.700 of 2022 registered with Ghatkopar Police Station, Mumbai, for the offences punishable under Sections 304B, 498A and 306 of the Indian Penal Code, 1860 ("the Penal Code").
3. Saba (the deceased), was the daughter of the first informant. The deceased had solemnized marriage with the applicant in May, 2018. The deceased as well as the applicant had a daughter each, out of their previous wedlock. The applicant was given into the vice of intoxication. The

applicant was not doing any gainful work. The applicant used to harass and ill-treat the deceased when she refused to pay money to the applicant. The applicant had allegedly made an unlawful demand of property as well.

4. On 26th July, 2022 in the midnight there were quarrels between the deceased and the applicant as the applicant was not doing any work. The applicant allegedly abused and assaulted the deceased. On 26th July, 2022 at about 1.30 pm. the deceased died by suicide.

5. The learned Counsel for the applicant submitted that the first informant did not like the marital bond between the applicant and the deceased. As the deceased committed suicide, the applicant has been falsely roped in.

6. The learned APP contested the prayer for bail. It was submitted that there are statements of witnesses which indicate that the applicant had assaulted the deceased. Attention of the Court was invited to the statement of the friend of the deceased.

7. *Prima facie*, it appears that the genesis of the offences is in the matrimonial discord between the applicant and the deceased. The tenor of the allegations in the FIR is that the

applicant was not gainfully employed and was demanding money from the deceased, who used to work and support the family on her own. There are allegations that the applicant had frequently abused and assaulted the deceased. *Prima facie*, the question as to whether the applicant had subjected the deceased to cruelty for or in connection with demand of dowry appears to be a matter for adjudication at trial. Undoubtedly the allegations in the FIR and record indicate that the deceased was trapped in an abusive relationship. However, whether the conduct of the applicant constituted abettment to commit suicide would be a matter for adjudication at the trial.

8. The applicant is in custody since 26th July, 2022. Further detention of the applicant does not seem warranted. I am, therefore, inclined to exercise the discretion in favour of the applicant.

9. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant Hasib Salim Shaikh be released on bail in CR No.700 of 2022 registered with Ghatkopar Police Station, Mumbai, on furnishing a P.R. Bond of

Rs. 30,000/- with one or more sureties in the like amount.

- (iii) The applicant shall mark his presence at the concerned police station on the first Monday of every month in between 10.00 am. to 12.00 noon for the period of three years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. The applicant 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 applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant 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 applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]