

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1884 OF 2023

Roshan Arun Koli	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

WITH
INTERIM APPLICATION NO.91 OF 2024
IN
BAIL APPLICATION NO.1884 OF 2023

Krushni Chandar Koli	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

Mr. Shekhar Ingawale, for the Applicant in BA/1884/2023.
Mr. P. H. Gaikwad, APP, for the Respondent-State.
Mr. Prashant Raul, for the Intervener in IA/91/2024.

CORAM : MADHAV J. JAMDAR, J.
DATED : JANUARY 29, 2024

P.C.:

1. Heard Mr. Ingawale, learned Counsel appearing for the Applicant, Mr. Gaikwad, learned APP appearing for the Respondent-State and Mr. Raul, learned Counsel appearing for the Applicant-Intervener.
2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are

as follows:-

1	C. R. No.	57 of 2022
2	Date of registration of F.I.R.	29/06/2022
3	Name of Police Station	Dadar Sagari Police Station, District-Raigad
4	Section/s invoked	304, 308, 312, 313, 314, 323, 498-A r/w 34 & 201 of the <i>I.P.C., 1980</i>
5	Date of incident	25/05/2022
6	Date of arrest	30/06/2022
7	Date of filing Charge-sheet	29/09/2022

3. As per the prosecution case, the Applicant - Accused No.1 and the deceased solemnised their love marriage in the year 2012. After a few years, the Applicant i.e. Accused No.1, the mother-in-law of deceased i.e. Accused No.2, Sister-in-law i.e. Accused No.3 and husband of Accused No.3 i.e. Accused No.4 started mistreating and misbehaving with the deceased. In the year 2019, the deceased left her matrimonial house and therefore a missing complaint was lodged and thereafter she was found. However, the deceased was ill-treated continuously even thereafter. Therefore, she left the matrimonial house in 2019 and went to reside in her parents' house. She returned to her matrimonial house on 1st January 2022. Thereafter, the deceased was found to be pregnant and Accused Nos.1 to 4 ill-treated her owing to the said pregnancy and forced the deceased to abort her fetus. The Accused Nos.1 to 4 suspected that the

said pregnancy was not from the wedlock with the Applicant-husband and therefore the Accused Nos.1 to 4 took the deceased to Accused No.5 who is a Medical Practitioner on the pretext that she was not well and while conducting a medical examination of the deceased, Accused No.5 illegally terminated the foetus of the deceased in an unscientific and unsafe medical procedure. The deceased eventually succumbed to said unscientific and unsafe medical procedure.

4. It is the submission of Mr. Ingawale, learned Counsel appearing for the Applicant that the Applicant has been in custody since 30th June 2022. All the accused except the present Applicant have been enlarged on bail. He submitted that most of the allegations against the present Applicant are concerning offences punishable under Section 498-A of the *Indian Penal Code, 1860*. He submitted that as far as the allegation concerning deceased succumbing to the unscientific and unsafe medical procedure for terminating the foetus is against the Accused No.5 who is a medical doctor and he has been released on bail by a learned Single Judge by Order dated 29th August 2023 passed in Bail Application No.1803 of 2023. He further submitted that the Accused Nos.2 and 4 have been released on bail By Orders dated 20th October 2022 and 26th July 2022 respectively passed by the learned Sessions Judge, Raigad-Alibag.

5. He submitted that although the Charge-sheet is filed on 29th September 2022 and the charge is framed on 21st August 2023, yet there is no progress in the trial. He pointed out the Order dated 3rd October 2023 passed by the learned Sessions Judge, Raigad-Alibag in the third Bail Application preferred by the present Applicant, wherein *inter alia* it is specifically stated that the charge against the Accused persons is framed on 21st August 2023 and as the trial has commenced, the same could be completed within a short duration. He submitted that inspite of same not even a single witness has been examined till date.

6. On the other hand, Mr. Gaikwad, learned APP appearing for the Respondent-State strongly opposes the Bail Application. He submitted that a significant role in the offence is attributed to the present Applicant. The charge is already framed and the matter is listed tomorrow i.e. 30th January 2024 in the trial Court for recording evidence. He submitted that the trial will be concluded within a short duration. He pointed out the statements of witnesses to contend that the deceased was subjected to physical and mental cruelty by the accused persons.

7. Mr. Raul, learned Counsel appearing for the Intervener also supported the learned APP in opposing the present bail Application. He submitted that apart from the fact that the deceased has been subjected to physical and mental cruelty, the

Applicant played a major part in taking the deceased to the Accused No.5-Doctor. He submitted that the Applicant has played a significant role and therefore he ought not to be released on bail.

8. A perusal of the prosecution case as reflected in the F.I.R. and the statements of the witnesses show that the deceased was subjected to physical and mental cruelty by Accused Nos.1 to 4 as they all were suspecting that the pregnancy was not from the wedlock with Accused No.1-husband and therefore Accused No.1 and 2 took the deceased to Accused No.5 - Dr. Shekhar R. Dhumal with an intention to get her foetus terminated.

9. As per the prosecution case the Accused No.5 illegally terminated the said foetus of the deceased by an unscientific and unsafe procedure and hence the deceased eventually succumbed to medical complications resulting from the said unscientific and unsafe M.T.P. procedure.

10. In this case, the Accused Nos.2 to 4 who are relatives of Accused No.1, have already been enlarged on bail by orders passed by the learned Trial Court. As far as Accused No.5 who is a Medical Practitioner is concerned, he has also been released on bail by Order dated 29th August 2023 passed by a learned Single Judge [Coram: N. R. Borkar, J].

11. The Applicant has been arrested on 30th June 2022. The Charge-sheet has been filed on 29th September 2022 and the

charge has been framed on 21st August 2023. However there is no progress in the trial till date.

12. Although, the learned Trial Court while rejecting the third Bail Application of the Applicant by Order dated 3rd October 2023 has observed that the trial could be concluded within a short duration, yet not even a single witness has been examined till date.

13. As per the list of witnesses submitted by the Special Public Prosecutor dated 16th October 2023, there are a total of 22 witnesses proposed to be examined by the Prosecutor and thereafter on 2nd January 2024 an additional list of two witnesses has been filed. Accordingly, a total of 24 witnesses are proposed to be examined by the learned Special Public Prosecutor.

14. The trial will likely take a considerably long time even on assuming that it is expedited. The Applicant is already under incarceration for more than 18 months.

15. The Applicant does not have any criminal antecedents.

16. Mr. Ingawale, learned Counsel appearing for the Applicant states that as several witnesses are residing in the same locality as that of the Applicant, the Applicant will therefore not reside within Taluka-Pen, District-Raigad and that the Applicant will reside at C/o. Parshuram Janardan Bhoir, At Post Aapta, Taluka-

Panvel, District-Raigad.

17. The Applicant does not appear to be at risk of flight.

18. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

- (a) The Applicant-Roshan Arun Koli be released on bail in connection with C. R. No.57 of 2022 registered with the Dadar Sagari Police Station, District-Raigad on his furnishing P. R. Bond of Rs.25000/- with one or two sureties in the like amount.
- (b) The Applicant shall not enter Pen Taluka, Raigad District after being released on bail, except for reporting to the Investigating Officer, if called and for attending the trial.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Rasayani Police Station, District-Raigad once in 15 days, between 11.00 a.m. and 1.00 p.m. on first and third Sunday till the conclusion of the trial. The Police Inspector of Rasayani Police Station, District- Raigad to communicate details thereof to the Investigating Officer.
- (e) 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 such a person from disclosing the facts to the Court or to any Police personnel.

- (f) The Applicant shall not tamper with the evidence and shall not contact or influence the Complainant or any witnesses in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

19. The Bail Application is disposed of accordingly.

[MADHAV J. JAMDAR, J.]