



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1981 OF 2023**

Roland Victor Monterio

... Applicant

versus

State of Maharashtra

... Respondent

Mr. Prashant Pandey with Mr. Ashok Dhanuka, Mr. Dinesh Jadhvani, Mr. Irfan Unwala i/by W3Legal LLP for Applicant.

Mrs. Geeta Mulekar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 11 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The Applicant has been arraigned in C.R.No.51 of 2020 registered with Vikhroli Police Station for the offences punishable under Sections 302, 304B, 498A, 504, 506 of the Indian Penal Code for having committed the murder of his wife Ema.
3. In brief, the prosecution case is that on the night intervening 8 and 9 February 2020, the applicant had called Control Room that his wife was critically ill. The police visited the house of the applicant along with an ambulance, and Ema was shifted to Ambedkar Hospital. She was declared dead. Upon enquiry, the applicant stated that on the night at about 10.00 p.m, Ema had consumed Combiflame to be relieved from body pain and subsequently her condition deteriorated.
4. During the course of investigation, it transpired that the applicant used

to harass and ill-treat the deceased. He used to subject the deceased to harassment in order to coerce her to meet unlawful demand. The applicant had allegedly demanded Rs.3 Lakhs to purchase a vehicle. The father of the deceased also stated that the accused had booked a room and he was subjecting the deceased to cruelty to coerce her to bring money for the said acquisition. The statement of the landlord as well as the neighbours were also recorded which indicate that the applicant and the deceased had frequent quarrels and the applicant abused and assaulted the deceased often under the influence of liquor.

5. Mr. Pandey, learned Counsel for the Applicant, submitted that, there is no material to show that the deceased met a homicidal death. Even the factum of unnatural death of the deceased cannot be said to have been borne out by the material on record. Taking the Court through the nature of the injuries noted on the person of the deceased in the inquest and the external injuries noted by the Autopsy surgeon in the post-mortem report, Mr. Pandey would submit that the homicidal death cannot be said to have been prima facie established. Secondly, according to Mr. Pandey, charge under Section 304B of the Code is also not sustainable as there is no material to show that soon before the death, the applicant had subjected the deceased to cruelty for or in connection with the demand of dowry. To this end, Mr. Pandey placed reliance on the decision of the Supreme Court in the case of **Charan Singh V/s. The State of**

Uttarakhand¹.

6. Mr. Pandey further submitted that the applicant has been in custody for more than four years. In **Sonu Parmeshwar Jha V/s. The State of Maharashtra**² this Court has released a person accused of the offences punishable under Sections 302, 304B of the Indian Penal Code who had suffered incarceration of one year and 7 months only. On this count also, the applicant deserves to be released on bail, submitted Mr. Pandey.

7. Learned APP has stoutly resisted the prayer for bail. It was submitted that there is overwhelming evidence not only of the family members of the deceased to whom the deceased had narrated her woes, but also of the landlord and neighbours who constantly witnessed the cruelty to which the deceased was subjected to by the applicant. Learned APP would further urge that it being a case of death of the deceased in the custody of the applicant, it is incumbent upon the applicant to offer explanation regarding the circumstances of the transaction in which the deceased met death. No such explanation is, prima facie, forthcoming. Thus, the applicant does not deserve the exercise of discretion.

8. I have given anxious consideration to the rival submissions and also perused the material on record. Prima facie, the nature of the death which the deceased had met, bears upon the claim for bail. Inquest, *inter alia*, records that there

1 Criminal Appeal No.447 of 2012

2 BA No.4122 of 2021 dt. 18 Jan. 2023

was a reddish black mark on the waist of the deceased above the right hip. In the post-mortem report, Autopsy Surgeon found the following external injuries :

“1. Contusion present on left arm, mid third part, posterolateral aspect of 4 cm – red.

2. Elliptical contused abrasion present on right side of abdomen, mid third antero-lateral aspect in an area of size 8 cm x 0.5 cm, elliptical in nature indentation of teeth marks of sizes varying from 1 cm x 0.5 cm to 0.7 cm x 0.3 cm suggestive of teeth marks – red. Area beneath the elliptic is pale.”

9. Autopsy Surgeon opined that the cause of death was blunt trauma to abdomen. It would be contextually relevant to note that Dr. Amjed Shaikh, who was on the ambulance in which the deceased was shifted to Ambedkar Hospital, also did not state the nature of the injuries which were found on the person of the deceased and her condition while she was being shifted to the hospital. Prima facie, it appears that there was no visible mark on the person of the deceased. The post-mortem does not indicate that there was any damage to the internal organs, suggestive of use of any weapon.

10. In the circumstances, prima facie, the question as to whether the deceased met a homicidal death or, for that matter, the death was unnatural, appears to be a matter for adjudication at the trial. On the aspect of the alleged cruelty to which the deceased was subjected to by the applicant, it is imperative to note that the mother of the deceased who reached the hospital, did not state that the applicant used

to ill-treat the deceased in order to coerce her to meet the unlawful demand. Indeed, the mother of the deceased stated that the cause of the death of the deceased should be investigated. The father of the deceased, however, narrated the illtreatment to which the deceased was allegedly subjected to.

11. It is true there are statements of the landlord and neighbours of the deceased, which indicate that the deceased was in a abusive marital relationship. Yet the question as to whether the deceased was subjected to cruelty for or in connection with the demand of dowry, prima facie, appears to be the matter for adjudication at the trial.

12. The applicant has been in custody for almost four years. The investigation is complete. It is unlikely that the trial can be concluded within a reasonable period of time. In the aforesaid view of the matter, especially having regard to the prima facie debatability of the issue as to whether the deceased met the homicidal death, I am inclined to exercise the discretion in favour of the applicant.

13. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Roland Victor Monterio be released on bail in C.R.No.51 of 2020 registered with Vikhroli Police Station, on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of

the learned Sessions Judge.

(iii) The applicant shall mark his presence before the concerned police station on first Monday of every month in between 11 am to 1 pm till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.

(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 disposed.

(N.J.JAMADAR, J.)