

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2530 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Abhishek Chandrabhan Chawla ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Dharmesh Joshi, a/w Parag Joshi, i/b t. D. Joshi &
Asso., for the Applicant.

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

PSI Sunil Kadu, Nirmalnagar Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 12th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in CR No.90 of 2023, registered with Nirmalnagar Police Station, Mumbai, for the offences punishable under Sections 306, 498A and 323 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), seeks to be enlarged on bail.
3. The deceased was the sister of the first informant. Her marriage was solemnized with the applicant in the year 2018. On 7th February, 2023, the deceased allegedly consumed poison. The deceased was shifted to Bhabha Hospital, Bandra. The deceased passed away on 10th February,

2023. The first informant lodged a report on 12th February, 2023 alleging that the applicant and Chandrabhan, the father-in-law of the deceased subjected the deceased to matrimonial cruelty. The applicant and Chandrabhan were making unlawful demand of money and in order to coerce the deceased to meet such unlawful demand, she was subjected the physical and mental harassment. The applicant allegedly had a relationship outside marriage and when the deceased remonstrated, she was subjected to ill-treatment. Unable to bear the ill-treatment, the deceased died by suicide.

4. The learned Counsel for the applicant submitted that the FIR is a creature of an afterthought. On 10th February, 2022 the police have recorded the statement of the first informant. In the said statement the first informant had made no grievance and, in fact, stated that the marital life of the applicant and the deceased was cordial.

5. The learned Counsel for the applicant further submitted that there is material discrepancy in the statements of the witnesses as regards the alleged oral dying declaration made by the deceased in the autorickshaw. The autorickshaw driver stated that the deceased was not responding to the efforts made by the applicant to ascertain

from her as to what had happened when she was being shifted to the hospital. The wife of the first informant, on the other hand, claimed that the deceased had narrated to her that on account of the harassment at the hands of the applicant and her father-in-law, she had consumed poison.

6. Evidently, on the date the deceased passed away, the statement of the first informant was recorded. On that date, the first informant did not allege that the applicant and his father had subjected the deceased cruelty in order to coerce the deceased to meet the unlawful demand. *Prima facie*, there is a material inconsistency in the statements as regards the oral dying declaration as well. In the circumstances, a *prima facie* case is made out in favour of the applicant.

7. The applicant has been in custody since 12th February, 2023. Investigation is complete for all intent and purpose. Charge-sheet has been lodged. Further detention of the applicant does not seem warranted. I am, therefore, inclined to exercise the discretion in favour of the applicant.

8. Hence, the following order.

: O R D E R :

- (i) The application is allowed.
- (ii) The applicant Abhishek Chandrabhan Chawla be released on bail in CR No.90 of 2023, registered with Nirmalnagar 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 before the concerned police station on the first Monday of every alternate month in between 10.00 am. to 12.00 noon for the period of two 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 disposed.

[N. J. JAMADAR, J.]