

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3541 OF 2023

Vasant Prakash Kerkar

...Applicant

Vs.

The State of Maharashtra

...Respondent

**SAYALI
DEEPAK
UPASANI**

Digitally signed
by SAYALI
DEEPAK
UPASANI
Date: 2024.03.30
10:16:31 +0530

Mr. Mithilesh Mishra i/b Agastya Desai, for Applicant.

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

Mr. Shirish G. Shigwan, for Respondent No. 2.

Mr. Sachin Tambe, PSI, MIDC Police station, Pairavi, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 26th MARCH, 2024

ORDER:-

1) The applicant, who is arraigned in CR No.393 of 2023 registered with MIDC Police Station, Mumbai for the offences punishable under Sections 306, 498A and 304B read with Section 34 of the Indian Penal Code, 1860, has preferred this application to enlarge him on bail.

2) The indictment against the applicant and the co-accused, who are his relatives, is that the marriage of the applicant was solemnized with Ashwini (the deceased), the sister of the first informant, on 10th May, 2022. Ashwini died by suicide at her matrimonial home on the night intervening 26th and 27th June, 2023. The first informant lodged a report initially against the applicant with the allegations that the applicant had subjected the deceased to cruelty. The applicant used to harass the deceased; abuse; insult and also beat her. The applicant had given notice of divorce to the deceased. Thus, unable to bear the physical and mental cruelty, the deceased died by suicide. Subsequently, the relatives of the applicant were also implicated with the allegations that the applicant and the co-accused also subjected the deceased to cruelty in order to coerce her to meet unlawful demands. Thereupon the charge under Section 304B of the Penal Code, 1860 came to be added. The applicant came to be arrested on 27th June, 2023.

3) Mr. Mishra, the learned Counsel for the applicant submitted that neither a case of dowry death, nor abetment to commit suicide is prima facie made out. Initially, no allegation of demand of dowry of whatsoever nature was made by the applicant and his parents. The allegations were that there were

frequent quarrels between the applicant and the deceased over familial issues. Reliance by the prosecution on the letter dated 21st May, 2023, purportedly addressed by the deceased to the MIDC police, does not advance the cause of the prosecution since the said letter was addressed by the deceased as there was a constant marital discord between the parties.

4) In opposition to this, Mr. Agarkar, the learned APP placed strong reliance on the said letter and urged that a month prior to the alleged occurrence the deceased had addressed a complaint which highlighted the torture she was subjected to, and resulted in NCR No. 1373 of 2023 for the offences punishable under Sections 323 and 504 of the Penal Code, 1860. Having regard to the proximity of such communication to the death of the deceased, the offence of dowry death can be said to have been prima facie made out.

5) Mr. Shigwan, the learned Counsel for the respondent No. 2 resisted the prayer for bail. It was submitted that the deceased was subjected to cruelty in order to coerce her to meet unlawful demand of property.

6) I have given anxious consideration to the rival submissions, it appears that the first informant had not initially alleged that the applicant had made any unlawful demand or the

deceased was subjected to harassment for or in connection with a demand for dowry. On the contrary, it was alleged that there were frequent quarrels between the applicant and the deceased on one or other ground and the applicant was seeking divorce though the deceased was willing to continue the marital bond and, therefore, the deceased was in a disturbed state. Initial statements of the parents of the first informant were also on similar lines.

7) It is true, in the complaint dated 21st May, 2023, the deceased adverted to the fact that there were demands for something new from her and her parents, starting from gold bangles, not given by her father at the time of marriage, and that the applicant and co-accused were seeking monthly contributions. At the same time, it is necessary to note that there are statements of witnesses, which indicate that the deceased suspected that the applicant was in a relationship outside marriage and had started to maintain distance from the deceased.

8) Prima facie, it appears that there was marital discord between the applicant and the deceased. The discord reached such a pass that the applicant had addressed a notice seeking dissolution of marriage on 7th June, 2023. It appears that the

marital bond was severely strained. The allegations in the complaint dated 21st May, 2022, may be required to be evaluated at the trial through the aforesaid prism.

9) Likewise, the absence of allegation of demand of dowry in the FIR as well as the statements of the parents of the deceased recorded immediately after the occurrence also assume significance. Had the demands been consistent, as alleged, ordinarily, they ought to have found mention in the FIR. What weight is to be attached to the said omission, would again be a matter for adjudication at the trial.

10) In any event, the applicant has been in custody since 27th June, 2023. Investigation is complete for all intent and purpose. Charge-sheet has been lodged. The applicant appears to have roots in society. Further detention of the applicant, therefore, does not seem warranted. I am, therefore, inclined to exercise discretion in favour of the applicant.

11) Hence, the following order.

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant be released on bail in CR No.393 of 2023 registered with MIDC Police Station, Mumbai for the

offences punishable under Sections 306, 498A and 304B read with Section 34 of the Indian Penal Code, 1860, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at the MIDC Police Station, Mumbai, on the first Monday of every month between 10.00 am to 12.00 noon for a period of three years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of 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.

[N. J. JAMADAR, J.]