

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

**INTERIM APPLICATION NO.995 OF 2024
IN
CRIMINAL APPEAL NO.245 OF 2024**

1. Arbaz Mehmood Pathan, &
2. Mumtaz Mehmood Pathan Applicants
Versus
1. The State of Maharashtra, &
2. Sirajuddin Mehboob Sayyed. Respondents

Ms. Neha R.Kokare, Advocate for the Applicants.

Mr. S.H. Yadav, APP for the Respondent No.1-State.

Mr. Vivek Arote, Advocate (appointed) for the Respondent
No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 12th AUGUST, 2024

P.C. :

1. This is an Application for bail pending Appeal.

The Applicants were convicted and sentenced as follows :

- i. They were convicted for the offence punishable under
Section 304-B read with 34 of IPC and were sentenced

to suffer RI for ten years and to pay fine of Rs.10,000/- and in default to suffer RI for three months;

- ii. They were convicted for the offence punishable under Section 498-A read with 34 of IPC and were sentenced to suffer RI for one year and to pay fine of Rs.5,000/- and in default to suffer SI for one month;
- iii. They were convicted for the offence punishable under Section 306 read with 34 of IPC and were sentenced to suffer RI for three years and to pay fine of Rs.10,000/- and in default to suffer RI for three months; and
- iv. They were convicted for the offence punishable under Section 323 read with 34 of IPC and were sentenced to suffer RI for three months and to pay fine of Rs.1,000/- and in default to suffer SI for ten days;

2. Heard Ms. Neha Kokare, learned counsel for the Applicants, Mr. S.H. Yadav, learned APP for the Respondent No.1-State and Mr. Vivek Arote, learned appointed counsel for the Respondent No.2.

3. The Applicants were the accused Nos.1 & 2 in Sessions Case No.13/2021 before the Additional Sessions Judge, Baramati. The learned Judge, vide the judgment and order dated 14.2.2024 convicted and sentenced the Applicants. Besides the Applicants, there were two other accused i.e. accused Nos.3 & 4. Accused No.4 was acquitted of all the charges and accused No.3 was convicted only under Section 323 read with 34 of IPC and was sentenced to suffer SI three months and to pay fine of Rs.1,000/- and in default to suffer SI for ten days.

4. The prosecution case is that the FIR was lodged by one Sirajuddin Sayyed, who was examined as PW-1 during trial. His younger daughter Karishma got married with the Applicant No.1 on 5.1.2020. The Applicant No.2 is the mother of the Applicant No.1. According to the first informant, during marriage he gave three tola gold ornaments, Rs.1 Lakh cash and other household articles as dowry. After marriage Karishma started residing with both the Applicants. The cohabitation was peaceful for a period of one month after

the marriage. After that, the Applicant No.2 told Karishma to see whether she could get some financial help from her parents because they had incurred debts from various people. When Karishma enquired with PW-1, he told Karishma that he did not have money as he had spent for expenses during the marriage. In February 2020, when Karishma had gone to her parents' house, the Applicants told her to bring Rs.50,000/- to repay the loan. PW-1 somehow could manage to pay Rs.4,000/- with the help of his friend but inspite of that Karishma was harassed and ill-treated by both the Applicants. Karishma was telling PW-1 about it. It is further alleged by PW-1 that Karishma had told her brother that the Applicant No.1 was having illicit relations with their neighbour and because of that he used to abuse and beat her. There were other allegations that the Applicant No.2 had married the original accused No.3 who was addicted to liquor. He also used to abuse and harass Karishma. Ultimately on 28.5.2020 Karishma called PW-1 telephonically and told him that the Applicants and the Accused No.3 had assaulted her and that

she had decided to commit suicide. She hanged herself and committed suicide. The informant went to the hospital where Karishma's body was kept. According to him there were signs of injuries on her body. On these allegations, the FIR is lodged.

5. Learned counsel for the Applicants submitted that the offence could not be that under Section 304-B of IPC. She relied on the judgment of the Hon'ble Supreme Court in the case of **Modinsab Kasimsab Kanchagar Vs. State of Karnataka and another** as reported in (2013) 4 SCC 551. It was observed that if the payment of money was not towards dowry but for payment of a society loan; in that situation, the conviction under Section 498-A of IPC could be upheld but the offence under Section 304-B of IPC would not be attracted as the payment was not made in connection with the marriage. Learned counsel for the Applicants relied on these observations.

6. Learned counsel further submitted that the neighbours have not really supported the prosecution case. The maximum sentence imposed for the offence under Section

306 of IPC was for three years. If the conviction under Section 304-B of IPC is set aside then the maximum sentence would be for three years. The Applicants were on bail during trial. They have not misused that liberty. There are allegations of the Applicant No.1's extra marital relations. This itself shows that there were other possible reasons for her to commit suicide. There was a specific role attributed to the Accused Nos.3 & 4 who were acquitted of the main charges.

7. Learned APP as well as learned counsel for the first informant submitted that the conviction under Section 304-B of IPC is properly recorded. The marriage had taken place on 5.1.2020 and within five months she committed suicide on 28.5.2020. There is a presumption under Section 113-B of the Evidence Act against the present Applicants.

8. I have considered these submissions. As far as the allegations that the deceased was assaulted before her death are concerned, the postmortem notes do not show any injuries on her dead body. The only one injury mentioned in the postmortem notes is the ligature mark. The death was caused

due to asphyxia due to hanging. Therefore, there is serious doubt about the assault on the deceased before her suicide.

9. There are allegations that the Applicant No.1 was having illicit relations with the neighbour. However, there is no such evidence brought on record by the prosecution. There is substance in the submission of the learned counsel for the Applicants that the observations of the Hon'ble Supreme Court in the aforesaid case of **Modinsab Kanchagar** (supra) would apply to this case. However, this will have to be tested at the final hearing stage. The major punishment awarded to the Applicants was under Section 304-B of IPC for ten years. Otherwise, the other major punishment was for three years for commission of the offence punishable under Section 306 of IPC. The Applicants were on bail during trial. There are no allegations that the Applicants had misused that liberty.

10. In this view of the matter, I am inclined to grant bail to the Applicants during pendency of their Appeal. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.245/2024, the Applicants are directed to be released on bail on their executing P.R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- (ii) Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2024.08.16
11:47:21
+0530