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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1647 OF 2024**

Swapnil Sambhaji Devram ... Applicant

vs.

The State of Maharashtra ... Respondent

WITH

INTERIM APPLICATION NO. 2389 OF 2024

IN

BAIL APPLICATION NO. 1647 OF 2024

Amrut @ Amit Gokul Nannaware ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. M.S. Mohite i/b. Ritesh Thobde and Zubi Ansari and Ankita Rai and Changdev Shingade, for the Applicant.

Mr. Atul Patil for Intervenor, appearing through VC.

Mr. A.R. Metkari, APP for Respondent-State.

Mr. S.B. Magar, Police Head Constable Barshi City Police station, present.

CORAM : GAURI GODSE, J.

DATED : 5th JULY 2024

ORDER :-

1. This bail application is filed by the accused no.1, who is the husband of the deceased. His application for regular bail is rejected

by the Additional Sessions Judge, Barshi, on 20th March 2024. Since the bail application filed by the co-accused was decided by me, this application is also placed before me in view of the administrative notice dated 8th February 2024.

2. I have heard the learned counsel for the applicant and the learned APP. Intervention Application No. 2389 of 2024, filed by the complainant, is heard and allowed. I have also heard the learned counsel for the Intervenor.

3. The accused no. 1, by this application, seeks his enlargement on bail in connection with CR No. 117 of 2022 dated 4th March 2023, registered with Barshi City, Solapur, for the offences punishable under Sections 304-B and 34 of the Indian Penal Code ("IPC"). Chargesheet is filed on 27th May 2022 for the offences punishable under Sections 302, 304-B, 201 and 34 of IPC.

4. Learned counsel appearing for the applicant submitted that the co-accused no. 5 is granted regular bail by this Court vide order dated 28th December 2023. He submits that the applicant is the husband of the deceased and is arraigned as accused no.1 in the case. He further submits that applicant's sister is arraigned as accused no. 3, and the co-accused no. 5 is her husband. Learned counsel for the applicant submitted that the allegations against the

applicant are almost similar to those of the allegations made against the accused no.5, who is already released on bail. He submitted that the statement of the complainant would reveal that the allegations regarding the demand of dowry are against the other co-accused, and there are no allegations of dowry demand against the applicant.

5. Learned counsel for the applicant submitted that after a few days of the marriage, it was revealed that the deceased had a love affair with a boy named Abhishek, and hence, there were disputes between the applicant and the deceased. Learned counsel for the applicant referred to the statement of Abhishek recorded during the investigation and submitted that his statement would show that the deceased had a love affair with Abhishek prior to her marriage with the applicant and that she was in touch with him after marriage.

6. Learned counsel for the applicant further pointed out the allegations made against the present applicant by the original complainant, who is the brother of the deceased. He submits that the allegations made regarding dowry demands were against the co-accused. With reference to the incident of 2nd March 2022, as narrated by the complainant, the learned counsel for the applicant submitted that the allegations against the applicant were only that

the deceased had informed the complainant that the applicant was suspicious about the deceased and was harassing her because of his suspicions. He submits that the complainant's statement does not reveal any allegations regarding dowry demands against the present applicant. According to the learned counsel for the applicant, considering the statements recorded during the investigation, including the statement of Abhishek, the possibility of suicide cannot be ruled out. The allegations made with regard to the offences under Sections 302 and 304-B do not attribute any role against the applicant. The learned counsel for the applicant submits that only because the death occurred within two months of the marriage, the presumption regarding Section 304-B cannot be applied in the absence of any allegations attributing any role showing the ingredients of the offence under Section 304-B.

7. Learned counsel for the applicant relied upon the cause of death, which shows that the most probable cause of death is due to Asphyxia due to drowning. He, in support of his submission, relied upon the definition of rapid death from immersion and clinical signs of drowning as stated in Medical Jurisprudence and Toxicology by PC Dikshit. He, thus, submitted that perusal of the statements, which are part of the chargesheet and the allegations by the original complainant, does not show any role against the applicant referable

to Sections 304-B and 302. He submits that the allegations of the incident and the description of the place where the deceased was found dead would show that there was no possibility of the allegations made under section 302.

8. With reference to the allegations made regarding the quarrel between the deceased and the applicant, the learned counsel for the applicant submits that the main allegation against the applicant was only that he was suspicious about the deceased having a relationship with Abhishek, as stated by her brother, i.e. the complainant. He, thus, submitted that the applicant cannot be said to have been involved in any of the offences as alleged under Sections 302 and 304-B. He, thus, submitted that there cannot be any involvement of the applicant in any of the offences based on the material relied upon by the prosecution. He, thus, submitted that the possibility of suicide cannot be ruled out. He submitted that the applicant has been incarcerated since March 2022. He further submitted that the investigation is completed, and the chargesheet is already filed. He, thus, submitted that the applicant be enlarged on bail. He submits that the applicant is also entitled to be released on bail by applying parity of the order granting bail to the co-accused no. 5.

9. Learned APP opposed the application and submitted that since the death is within two months from the date of marriage, the presumption under Section 304-B is applicable. He relied upon the postmortem report to support his submission that the cause of death does not show the possibility of suicide, and thus, an offence under 302 of IPC cannot be ruled out. He submits that the allegations of the incident prior to the death and presumption under Section 304-B indicate that there is a strong possibility of the applicant's direct involvement in the offences. Hence, the applicant should not be released on bail.

10. Learned counsel for the Intervenor, i.e., the complainant, submitted that the medical evidence and the place where the deceased was found dead would not show that the deceased died by drowning in an attempt to commit suicide. He submitted the material found in the investigation would show that the offences under 304-B and 302 cannot be ruled out. He relied upon the statement of Abhishek, with whom the deceased was alleged to have a love affair before marriage. He submitted that in his statement, it is clearly stated that the applicant had assaulted him and the deceased when he met them in Pune. He, thus, submits that the statement would show that the applicant is directly involved in the offences. He relied upon Section 113A of the Indian Evidence

Act and submitted that there is a presumption against the applicant, and the same can be rebutted only during the trial. Hence, according to the learned counsel for the Intervenor, as per the material available during the investigation, the applicant's involvement is clearly seen in the offences. Hence, he may not be released on bail. He further submitted that Section 201 of IPC is also applied, and the applicant is likely to destroy the evidence in future. Hence, the applicant may not be enlarged on bail.

11. I have perused the papers and considered the submissions made by the parties. A perusal of the postmortem report and the opinion of the Medical Officer relied upon by the Intervenor do not indicate that the possibility of suicide cannot be ruled out completely. The material on record and the allegations made against the applicant do not indicate at this stage that there is a direct role of the applicant in the offences. The case is of circumstantial evidence. Thus, only in view of the presumption under 304-B of IPC, it cannot be said at this stage that the applicant is directly involved in the offences. Considering the aforesaid, prima facie, I find substance in the arguments made by the learned counsel for the applicant that the possibility of suicide cannot be ruled out completely.

12. The allegations against co-accused no. 5 are that he had also

quarrelled with the deceased regarding demand for money, and he had informed the complainant that the deceased had committed suicide. After having perused the allegations made against the applicant and other co-accused, I find that the role ascribed to the applicant is substantially similar to the allegations made against co-accused no. 5, who is released on bail. Hence, by the reason of parity also the applicant is entitled to bail. Considering the nature of the allegation for the offences under section 201 of IPC, I do not find substance in the argument by the learned counsel for the Intervenor that the same would be a ground for refusing bail. Of course, all these are prima facie observations having no impact on the merits of the trial.

13. The investigation is complete, and the chargesheet is filed. The applicant has been in custody since March 2022. It is not in dispute that the trial has not proceeded, and charges are not framed. Hence, in view of the above, the applicant has made out a case for grant of bail. Hence, the following order is passed:

- I) Criminal Bail Application is allowed.
- II) Applicant- Swapnil Sambhaji Devram, accused no.1 be released on bail in connection with CR No. 117 of 2022 dated 4th March 2023 registered with Barshi City

Police Station, District Solapur, for offences punishable under Sections 302, 304-B, 201 and 34 of the Indian Penal Code on furnishing P.R. bond in the sum of Rs. 50,000/- with one or two sureties in the like amount.

III) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with any evidence.

IV) The applicant shall submit his address where he will be residing and his contact/mobile number to the Investigating Officer and in the event any change in the address or contact/mobile number, he will intimate the same to the Investigating Officer forthwith.

V) The applicant shall attend the Lohegaon police station, Pune on every 2nd and 4th Saturday of every month in between 10.00 am to 1.00 pm.

VI) The applicant shall attend all the dates of the hearing before the trial court.

VII) In the event of breach of any of the conditions by the applicant, the prosecution will be entitled to apply for cancellation of bail.

Parties to act on the authenticated copy of this order.

(GAURI GODSE, J.)