



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPP) NO. 1206 OF 2024
IN
CRIMINAL APPLICATION (BA) NO. 591 OF 2024

Uzma Kausar w/o Siraj Wahab Sheikh Nikki Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Abdul Subhasn, counsel for the applicant.
Ms. T.H. Udeshi, APP for the non-applicant/State.
Mr. P. Rewatkar, counsel for Assist to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/07/2024.

1. Present application is preferred by son of the complainant, as the complainant is unable to appear before the Court due to his physical disability. The complainant is seeking permission to engage the counsel to assist the prosecution.

2. In view of the reasons mentioned in the application, complainant is permitted to engage the counsel to assist the prosecution.

3. The criminal application (APPP) No. 1206/2024 is **allowed.**

Criminal Application (BA) No. 591/2024

1. The applicant came to be arrested on 22/05/2024, in connection with crime No. 356/2024 registered with Police Station Lakadganj, District Nagpur for the offence

punishable under Sections 304B, 498A read with Section 34 of the Indian Penal Code, 1860 and under Section 4 of the Dowry Prohibition Act, 1961.

2. The First Information Report is lodged by the father of the deceased on the allegation that the marriage of his daughter was performed with the co-accused, Sohail Sheikh, on 13/05/2022, and out of said wedlock they had a child born on 26/04/2023. After marriage, she was treated well for one and a half months, and thereafter, co-accused Sohail Sheikh started harassing her by saying that she should bring the Rs. 2 lakhs to purchase a car, and on that count, she was ill-treated not only by her husband but also by other family members. As far as the present applicant is concerned, she is the sister-in-law of the deceased. It is alleged that whenever she used to be at the parents house, she used to harass her, and therefore, she committed suicide. The death of the deceased was caused in a suspicious circumstances. On the basis of said report, police have registered the crime against the present applicant and other co-accused.

3. Learned counsel for the applicant submitted that the marriage of the present applicant is performed after two days of the marriage of the deceased, i.e., on 15/05/2022. Since marriage, she is resided in Kalmeshwar along with her husband. As far as the allegations are concerned, which are general in nature. He submitted that since the date of arrest, the applicant is behind bar. The investigation is practically completed as far as the further incarceration of the applicant

is concerned, which is not required. In view of that, she be released on bail.

4. Learned APP strongly opposed the application on the ground that within seven years of marriage, the deceased has committed suicide and her death was caused in a suspicious circumstances in the matrimonial house. He further submitted that the statement of the neighbours discloses that the applicant used to visit her parents house and used to harass the deceased, and her involvement in the quarrel is reflected in the statement of the neighbouring witnesses. Thus, considering the role of the present applicant, the bail application deserves to be rejected.

5. Learned counsel appearing for son of the complainant endorsed the same contention and submitted that, if the applicant/accused is released on bail, she would tamper with the prosecution witnesses. He further submitted that the role of the present applicant was revealed from the statements of the neighbouring witnesses. Considering the gravity of the offence, the application deserves to be rejected.

6. After hearing learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR as well as the investigation papers. There is no dispute as to the fact that the deceased has committed suicide by hanging herself. The FIR is lodged by the father of the deceased, alleging that since the marriage, she has been ill-treated by the present applicant and other co-accused. The statements

of the neighbouring witnesses also show the involvement of the present applicant in the quarrel which took place between the deceased and other family members. After going through the recitals of the various statements recorded by the investigating officer, it shows that general allegations is made against the present applicant, showing her involvement in the ill-treatment of the victim and in the quarrel. As far as the abetment part is concerned, there should be some positive act on the part of the applicant to connect her with the alleged offence.

7. The Hon'ble Apex Court in the case of ***Shabbir Hussain vs. The State of Madhya Pradesh [(2021) 17 SCC 807]***, wherein it is observed that in order to bring a case within the provisions of Section 306 of the IPC, there must be a case of suicide, and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide. The Hon'ble Apex Court further goes on to observe that mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 of the IPC.

8. Here in the present case, the statements of the various witnesses it reveals that a general allegation is made against the present applicant. Now, the investigation is almost completed, though a charge sheet has not been filed.

Considering the same, further incarceration of the present applicant is not required. In view of that, application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a) The criminal application is allowed.
- b) The applicant – Uzma Kausar w/o Siraj Wahab Sheikh @ Nikki, (Uzma Kausar d/o Sheikh Hamid @ Nikki) shall be released on bail, in connection with crime No. 356/2024 registered with Police Station Lakadganj, District Nagpur for the offence punishable under Sections 304B, 498A and 34 of the Indian Penal Code, 1860 and under Section 4 of the Dowry Prohibition Act, 1961, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- d) The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]