



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**1027 CRIMINAL APPLICATION NO. 2501 OF 2025
IN APPEAL/501/2025**

1. BRAHMANAND GURUNATH SWAMI (MATHPATI)
2. GURUNATH VISHWANATH SWAMI (MATHPATI)
3. SHANTABAI GURUNATH SWAMI (MATHPATI)

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicants: Mr. Mahesh S. Deshmukh i/b.
Mr. Uddhav Laxmanrao Momale

APP for Respondent/State: Mrs. A. S. Mantri

...

WITH

CRIMINAL APPEAL NO. 501 OF 2025

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 01.08.2025

P.C. :

1. Heard.

2. The present application is filed by the applicants for suspension of substantive sentence imposed on them in Sessions Case No.64/2008, dated 05.07.2025, by Additional Sessions Judge, Udgir, District Latur. The applicants have been convicted thus:

"1. The accused No. 1 Bramhanand Gurunath Swami (Mathpati), No. 3) Gurunath Vishwanath Swami (Mathpati) and No. 4) Sau. Shantabai Gurunath Swami(Mathpati) are held guilty and convicted for offence punishable under section Offence p.u.s. 304-B, 498-A r. w. sec. 34 of the Indian Penal Code as well as offence

punishable under section 3 and 4 of Dowry Prohibition Act vide Sec. 235 (2) of Code of Criminal Procedure for the.

2. The accused No.1 Bramhanand Gurunath Swami (Mathpati) is sentenced to suffer rigorous imprisonment for 10 (Ten) years and to pay a fine of Rs. 5,000/- (Rs. Five Thousand), in default of payment of fine, he shall suffer rigorous imprisonment for 02 (Two) months for offences p.u.s. 304-B r. w. sec. 34 of the Indian Penal Code.

3. The accused No.3 Gurunath Vishwanath Swami (Mathpati) is sentenced to suffer rigorous imprisonment for 07 (Seven) years and to pay a fine of Rs. 5,000/- (Rs. Five Thousand), in default of payment of fine, he shall suffer rigorous imprisonment for 02 (Two) months for offences p.u.s. 304-B r. w. sec. 34 of the Indian Penal Code.

4. The accused No.4 Sau. Shantabai Gurunath Swami (Mathpati) is sentenced to suffer rigorous imprisonment for the period of 07 (Seven) years and to pay a fine of Rs. 5,000/- (Rs. Five Thousand), in default of payment of fine, she shall suffer rigorous imprisonment for 02 (Two) months for offences p.u.s. 304-B r. w. sec. 34 of the Indian Penal Code.

5. The accused No.1 Bramhanand Gurunath Swami (Mathpati) is sentenced to suffer rigorous imprisonment for 01 (One) years and to pay a fine of Rs. 2,000/- (Rs. Two Thousand), in default of payment of fine, he shall suffer rigorous imprisonment for 01 (One) month for offences p.u.s. 498-A r. w. sec. 34 of the Indian Penal Code.

6. The accused No.3 Gurunath Vishwanath Swami (Mathpati) is sentenced to suffer rigorous imprisonment for 01 (One) year and to pay a fine of Rs. 2,000/- (Rs. Two Thousand), in default of payment of fine, he shall suffer rigorous imprisonment for 01 (One) years for offences p.u.s. 498-A r. w. sec. 34 of the Indian Penal Code.

7. The accused No.4 Sau. Shantabai Gurunath Swami (Mathpati) is sentenced to suffer rigorous imprisonment for the period of 01 (One) year and to pay a fine of Rs. 2,000/- (Rs. Two Thousand), in default of payment of fine, she shall suffer rigorous imprisonment for 01 (One) month for offences p.u.s. 498-A r. w. sec. 34 of the Indian Penal Code.

8. The accused No. 1 Bramhanand Gurunath Swami (Mathpati), No. 3) Gurunath Vishwanath Swami (Mathpati) and No. 4) Sau. Shantabai Gurunath Swami(Mathpati), each of them, is sentenced to suffer rigorous imprisonment for the period of 06 (Six) month and to pay a fine of Rs. 2,000/- (Rs.Two Thousand) each, in default of payment of fine, they shall suffer rigorous imprisonment for 01 (one) month for offences punishable under section 3 and 4 of Dowry Prohibition Act, 1961.

9. All the substantive sentence shall run concurrently.”

3. The learned counsel for the applicants submits that as regards applicant no.1 husband of the deceased he is convicted maximum for 10 years and other 2 applicants are convicted for 7 years. All sentences are to run concurrently.

4. The learned counsel for the applicants submits that applicant no.1 married the deceased in the year 2003 and it is stated that the deceased with her ten months old child committed suicide on 30.06.2008. The case against the applicants is registered under Sections 304(B) , 498-A r/w Section 34 of the IPC. The applicants are convicted for Section 304(B) of the IPC and Section 498-A r/w Section 34 of the IPC. It is stated that at the time of the marriage the applicants demanded 2 tolas of gold and an amount of Rs.1,00,000/- which was to be paid by selling of their land. It is stated that just prior to the incident i.e. on 29.04.2008 the deceased was driven out of the house by all the applicants on account of non payment of dowry and, thereafter, she went to her maternal home. It is stated that

on 04.05.2008, informant PW-1 along with PW-7 returned her back to her matrimonial home and assurance was given by PW-1 to the applicants that he would pay the balance dowry to the applicants. It is again stated that on 15.06.2008 that when the PW-1 had met deceased she had mentioned to him that the in-laws are continuously harassing her on account of non-payment of dowry. Thereafter on 30.06.2008 on account of harassment and dowry demand the deceased committed suicide.

5. The learned counsel for the applicants has taken me through the evidence of PW-1, wherein he has particularly pointed out that PW-1 in his cross-examination has deposed that he married on 29.04.2008 and in his marriage the family of the deceased were present and in fact the *mangalashtaka* were recited by accused no.1. Similar is the statement of PW-5 that they were present in the marriage. As such, the learned counsel submits that the alleged incident as stated to be on 29.04.2008 has not taken place. He also points out that the incident of returning the deceased on 04.05.2008 is also concocted. PW-10, the Investigating Officer has stated that PW-1 has not stated to him that the informant had gone to the house of the Nilamma (*deceased*) for dropping her and he agreed to give gold as agreed in the marriage. It is also stated by PW-10 that at the time of lodging report the informant has not stated that on 15.06.2008 when he went to Loni for work

he had been to the house of Nilamma and at that time Nilamma had stated to the informant that all the accused are harassing her for non payment of dowry. As such, he points out that the incidents / events dated 29.04.2008, 04.05.2008 and 15.06.2008 have never taken place. The learned counsel submits that the evidence on this aspect is clear, that this is an improvisation made just to bring the offence under Section 304(B). He further points out Evidence of PW-5, wherein she has stated that two gold rings were brought by the applicants for the naming ceremony of the daughter of PW-1 and that they were given as presents by the present applicants to her. He also points out in her deposition of PW-5 that when the land was sold in the year 2006 there was no demand of Rs.1,00,000/-. He submits that going by his particular evidence if there was any demand of dowry there could have been no occasion for the applicants to gift gold or participate in the ceremony of the informant. He submits that the case is made out specially as regards the demand of dowry is not borne out from the record. The entire evidence is only oral and made at the stage of deposition and in the cross-examination the case of demand of dowry is entirely destroyed.

6. Considering these aspects of the matter, the learned counsel for the applicants submits that the appeal be admitted, sentence be suspended and the applicants be released on bail.

7. The learned APP submits that considering the evidence of PW-1, PW-5, PW-7 the demand of dowry is spelt out and that there is harassment at the instance of the applicant and that the same has been dealt with by the learned trial court in paragraphs no.45 and 49 as under:

“45) It is true that it has come in evidence that marriage of informant was solemnized on 29-4-2008, the deceased Nilamma and accused persons attended marriage, cannot be a ground to discard the evidence of informant Shivaling (PW-1) on point of subjected cruelty to deceased Nilamma on 29-4-2008. Moreover, the evidence on record has shows that the in-laws of deceased Nilamma harassed her for unpaid demand of dowry, i.e. two tolas gold and she was subjected to illtreatment on that count, thereafter she was assaulted on 29-4-2008, the informant visited her house on 15-6-2008, she made complaint of ill-treatment meted out to her by the in-laws, thereafter incident occurred on 30-6-2008. All this chain of circumstances shows that their existed live and proximity link between incident of dowry demand and death caused therefor.

49) The evidence adduced by the prosecution reveals that two tolas gold of dowry was not paid in marriage, the deceased was subjected ill-treating by in-laws for unpaid dowry after the marriage, the evidence on record shows that deceased was harassed persistently by in-laws against the dowry demand, she narrated the informant about the same, the deceased was assaulted and driven out of house on 29-4-2008, the informant dropped deceased to her matrimonial house and tried to convince the accused, still the deceased was subjected to cruelty and harassment by the accused persons, which is seen from the evidence of informant (PW-1) that when he has visited house of in-laws of deceased Nilamma on 15-6-2008 and meet her. Thereafter, the deceased Nilamma and her minor daughter Payal found in burnt condition.”

8. Considered the rival submissions. The ingredients required for offence of 304-B IPC is noted by the Hon'ble Apex Court in the case of **Satbir Singh and another Vs. State of Haryana, (2021) 6 SCC 1**. For conviction under Section 304-B of the IPC following are the essential ingredients:

“10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:

- (i) the death of a woman should be caused by burns or bodily injury or otherwise than under a “normal circumstance”;*
- (ii) such a death should have occurred within seven years of her marriage;*
- (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;*
- (iv) such cruelty or harassment should be for or in connection with demand of dowry; and*
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.”*

9. Considering the essential requirements to bring home the guilt under Section 304-B of the IPC and considering the evidence as on record, prima -facie, it seen that the evidence as regards the driving out the victim on 29.04.2008 from the matrimonial home for not meeting the demand of dowry, so also, returning her back on 04.05.2008 and evidence as regards the assurance was given by PW-1 that the demand of dowry would be met in near future, are not clearly brought out. From the cross-

examination of the prosecution witnesses the probability of these events becomes doubtful. There is doubt as regards the events of 29.04.2008, 04.05.2008 and 15.06.2008. The evidence of PW-10, the Investigating Officer has contradicted the statement of PW-1, PW-5, PW-7, so also, evidence of PW-5 states about land was sold in the year 2006 there was no demand of Rs.1,00,000/-, which according to the prosecution was one of the demand at the time when the marriage was fixed.

10. Considering all these aspects, the applicants has arguable case and the trial court's Judgment is clearly assailable. In view of this, there is doubt as regards the evidence of demand of dowry, sustained harassment for dowry and soon before incident there was demand of dowry.

11. Considering the same, the Criminal Appeal No.501 of 2025 is **admitted**.

12. The learned APP accepts notice for the State Authorities.

13. Leave to amend / add grounds in the appeal memo

14. Considering the above, I pass the following order :

ORDER

i] Criminal Application No.2501 of 2025 is allowed.

ii] The substantive sentence imposed on the applicants in Sessions Case No.64/2008, dated 05.07.2025, by Additional Sessions Judge, Udgir, District Latur , stands suspended till the final hearing and disposal of Criminal Appeal.

iii] The applicants be released on bail on furnishing P.R. bond of Rs.20,000/- each with one or two sureties in the like amount to the satisfaction of the trial court.

iv] Bail before the trial Court.

v] The applicants shall attend the trial court once in a year till final hearing and disposal of the appeal, commencing from the date the applicants tender bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.

vi] It is also clarified that the observations made in this order are limited only for the purpose of deciding the present Application.

[ARUN R. PEDNEKER]
JUDGE