



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1757 OF 2024

Ganesh Jagannath Phuke

Age - 33 years, Occupation - Labour,

R/o. Dhagar Galli, Ganesh Par,

Parali V., Tq. Parali V.

District Beed.

... Applicant

Versus

1] The State of Maharashtra,
Through Officer In charge,
Police Station Sambhaji Nagar,
Parali V., District Beed.

2] The Superintendent of Police,
Beed, District Beed.

... Respondent

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Ms. Ashwini A. Lomte, Advocate for the Applicant.

Mr. V. M. Chate, APP for Respondent Nos. 1 and 2-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 24.01.2025

Pronounced on : 28.01.2025

ORDER :

1. In this regular bail application, there are prayers for grant of regular bail on account of arrest of applicant on 06.06.2024 in FIR no. 0091 of 2024 registered at Sambhaji Nagar Police Station, Parali, District Beed for offences under Sections 302, 307, 304-B, 498-A, 323, r/w 34 of IPC.

2. Learned counsel pointed out that deceased Jayashree, wife of present applicant, gave dying declaration alleging harassment and cruelty on account of demand, and on her dying declaration, FIR has been registered. Learned counsel pointed out that initially, offence was for Section 307 IPC. Deceased died after a week and thereafter crime has been converted to 302 and 304-B a/w 498-A IPC. Learned counsel pointed out that, in fact deceased had suffered over 90% burns and mainly face being affected and she being under effect of anesthesia, was not in a position to give any dying declaration. She pointed out that, there are certain shortfalls and lacuna in dying declaration. Authority, who recorded dying declaration, gave statement about obtaining signature, but on dying declaration, there is thumb impression. Learned counsel pointed out that allegations were against mother-in-law also, however, she has been granted bail. That, in fact, burns suffered by deceased were while cooking and there is MLC to that extent and as such, according to learned counsel, it is clear that incident is accidental one. That, there is false implication on cruelty, harassment and demand. That, now investigation is over and when nothing is shown to be recovered at applicant's instance, and moreover as he is ready to abide all conditions, including staying away till conclusion of trial, she seeks grant of bail.

3. Learned APP pointed out that, apparently crime is registered on the dying declaration. That, marriage had taken place in February 2022. There are allegations of being properly treated for only a month or so. Thereafter, there was harassment i.e. both, mental and physical. There was demand of articles and on account of its non-fulfillment, cruelty was inflicted. Victim used to report it to her family members. Learned APP pointed out that on 01.06.2024, there are allegations of husband and mother-in-law initially beating her saying that second marriage would be performed and thereafter, kerosene being poured and she being set to fire by both of them. Therefore, according to learned APP, specific role of the applicant has been narrated. That, it is a dowry death and hence learned APP opposes the bail application.

4. After hearing both sides and on going through the papers, it is emerging that, as submitted, above crime is in consequence to dying declaration given by Jayashree while she was hospitalized and she has given statement that, after her marriage dated 19.02.2022, she was treated properly for a month, but thereafter, she has alleged that, present applicant husband prevented her from talking on phone, from going out of the house and she alleges trouble. Against mother-in-law, deceased has alleged that, she used to say that her parents did not

give anything in marriage and that she should not sleep on the cot and thereby, she was given trouble. Subsequently, she alleges that husband and mother-in-law asked her to bring money for TV, refrigerator and cupboard as nothing was given in marriage by her father, and again she alleges trouble like keeping her confined in the house. On 01.06.2024, she has alleged that, mother-in-law asked her to cook and she answered that she is feeling dizzy. Upon which, applicant and mother-in-law gave her kicks and fist blows and thereafter she alleges that, they both went out of the room and mother-in-law returned with bottle of kerosene, accompanied by husband, and saying that she should be done to death, mother-in-law poured kerosene and thereafter husband ignited her.

On above statement, crime seems to be registered.

5. From the above statement, what is discerned is that after one month of marriage, there are allegations against applicant husband for not permitting her to talk on phone and not permitting her to go out of the house. Against mother-in-law, there are allegations about she taunting that nothing was given in the marriage and asking her not to sleep on the cot. Then there are allegations of demand of money for purchasing TV, refrigerator and cupboard, and on such count, there was said to be harassment.

6. In the above statement, regarding occurrence dated 01.06.2024, there are allegations of incidence taking place on her refusal to cook as a result of feeling dizziness. Pouring of kerosene is attributed to mother-in-law and role of igniting is attributed to present applicant husband.

7. On previous date, when submissions of learned counsel for the applicant were heard, she was very assertive that she has confirm information that, while being taken to hospital, occurrence has been reported to have taken place while cooking and there are papers to that extent. Therefore, she sought adjournment to procure the same. Learned APP submitted that he has called the Investigating Officer and that, information has been received from him that there is no such reporting. Accordingly, matter was adjourned and finally heard. At page 84 of police papers, there is photocopy of MLC dated 01.06.2024 recorded at 09.00 p.m. wherein there is noting that patient came to casualty with complaint of burns over the body while cooking at 6.00 p.m. on 01.06.2024 at Parli. Statement/dying declaration of deceased is apparently recorded on 02.06.2024 and not promptly on 01.06.2024. On coming across above material, visit is paid to scene of occurrence panchanama which shows that incidence had taken place in the kitchen.

8. Mother-in-law, against whom allegations are of pouring, is already beneficiary of regular bail at the hands of learned Additional Sessions Judge, Ambajogai vide order dated 13.08.2024. Applicant is arrested on 06.06.2024, i.e. on report lodged on 02.06.2024. He is said to be behind bars since then. Now, investigation is said to be over. Taking above discussion into consideration, applicant succeeds. Hence, I proceed to pass the following order:

ORDER

- I. The application is allowed.
- II. Applicant Ganesh Jagannath Phuke, be released on bail in connection with Crime No. 0091 of 2024 registered at Sambhaji Nagar Police Station, Parali, District Beed, on executing Personal Bond of Rs. 15,000/- with one surety in the like amount, on following conditions :
 - [a] The applicant shall not tamper prosecution evidence.
 - [b] The applicant shall not enter village Parali Vaijnath, District Beed till conclusion of trial.

[ABHAY S. WAGHWASE, J.]