



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

CRIMINAL APPLICATION NO.8 OF 2024

(Minakshi w/o Satish Anasane Vs. State of Maharashtra and anr.)

AND

CRIMINAL APPLICATION NO.59 OF 2023

(Minakshi w/o Satish Anasane Vs. State of Maharashtra and ors.)

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

Court's or Judge's Order

APPLN No.8/2024.

Ms Garima Sanjay Jain, counsel h/f Mr. S.V. Sirpurkar, Advocate for the applicant.

Ms. Ritu Sharma, APP for the State.

Ms Anjana Motiram Raut, counsel for non-applicant No.2.

APPLN No.59/2023.

Mr. V.D. Ruparelia, counsel with Mr. B.K. Suchak, counsel for the applicant.

Ms. Ritu Sharma, APP for the State.

Ms Anjana Motiram Raut, counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/02/2025.

1. Both the applications are filed by applicant Minakshi w/o Satish Anasane (original complainant) for cancellation of bail granted to the non-applicant No.2 – Rushabh Kailas Dhandhare in Criminal Application No. 8/2024, who is the husband of the deceased, and non-applicant No. 2, Jayshri Kailas Dhandhare, Shubham Kailas Dhandhare, who are the mother-in-law and brother-in-law of the deceased. The crime is registered against the present non-applicants in both the applications vide crime No. 258/2023 registered under Sections 498-A, 306, 304-B, and 506 read with Section 34 of the Indian Penal Code, 1860. On an allegation that on 15/04/2023, the applicant's daughter, who

was 18 years old, went missing. After many attempts of searching her, the complaint was lodged as to the missing. A few days later, the complainant and her husband came to know that their daughter and the present non-applicant No. 2, namely Rushabh, got married before the Marriage Office at Buldhana and started living at Choundi, Buldhana.

2. The other applicants in Criminal Application No. 59/2023 are mother-in-law and the brother-in-law of the deceased. The complainant reached the residence of the present non-applicant No. 2; however, she found the house was locked. After inquiring about non-applicant No. 2, they came to know that prior to this marriage, he was already married with one Anita, and out of the said wedlock, non-applicant No.2 has 17 years old son. Though the first marriage was in existence, the non-applicant No.2 performed the marriage with the deceased. The complainant came to know from her relatives that the victim called her grandmother and asked her to provide financial assistance, as she was in dire need of money as non-applicant No.2 was torturing her. After 8 to 10 days, the victim again called the complainant and informed him that the non-applicant No.2 tortures her for money and always fights with her. On 06/06/2023, the non-applicant No.2 informed the complainant that the victim is not keeping well as she is suffering from sunstroke and was admitted to Critical Hospital Washim. Immediately the complainant, along with her husband, reached the hospital, where doctors informed her that the victim had consumed poison and needs to be treated immediately by shifting her to

the hospital in Akola. Accordingly, the deceased was shifted to the hospital. The complainant further observed that she had been abandoned at the hospital in a critical condition. The complainant and her husband took the victim to the hospital in Akola on 07/06/2023. However, she succumbed to the death. On the basis of the said report, police have registered the crime against the present applicants.

3. As far as the non-applicant Nos.2 and 3 in Criminal Application No. 59/2023 are concerned, they are released on anticipatory bail by the Additional Sessions Judge, Washim, by observing that police have recorded the statement of the maternal uncle of Rushabh, and it revealed that Rushabh and the deceased had been to their house and informed them that they had performed the registered marriage. As far as the allegation against the mother-in-law and brother-in-law of the deceased are concerned, which are general in nature and therefore, they were released on anticipatory bail.

Whereas the non-applicant No.2 in Criminal Application No. 8/2024, who is the husband, is released on bail by Additional Sessions Judge, Washim, by passing an order on 12/10/2023 by observing that in the FIR, it is not mentioned that the deceased had disclosed that the accused was demanding Rs. 5 lakh, and the first time that statement came to be recorded under Section 164 of Cr.PC. The Sessions Court further observed that the investigation is over and further incarceration of the applicant is not required and released him on bail.

4. Now, these applications are filed by the original complainant for cancellation of bail on the ground that the learned Sessions Judge has ignored the material and, without assigning any reason, granted the bail. In fact, the learned Sessions Court ought to have considered that there were injuries on the person of the deceased prior to her death. The statements of the witnesses and the disclosure by the deceased to her parents sufficiently show the involvement of the present non-applicant No.2 in the Criminal Application No. 8/2024 however, the Sessions Judge ignored the same and granted him bail. The Sessions Court has also ignored the various statements of the witnesses recorded during the investigation, and thus, the order is passed by the Sessions Judge without considering the investigation material, and therefore, the application deserves to be allowed.

5. Heard learned counsel for the applicant, she reiterated the said contentions and invited my attention towards the post mortem report as well as various statements of the witnesses and the entire investigation papers, and submitted that on perusal of the order passed by the Sessions Judge, there is no whisper as to the injuries on the person of the deceased regarding the various statements of the witnesses and the statement of first wife of the present non-applicant No. 1. Thus, without considering the investigation material and the involvement of the present non-applicant No.2, he is released on bail by the Sessions Court.

6. Learned counsel in the Criminal Application No. 59/2023 has also submitted that while releasing the non-applicant Nos. 2 and 3 therein, the Sessions Court has not considered their respective roles, and without giving an opportunity for investigation by taking them into custody, they were released on bail.

7. Learned APP supported the contention of the learned counsels of the applicant and submitted that the order passed by the learned Sessions Judge is by ignoring the vital material, which is collected during the investigation.

8. Per contra, learned counsel for the non-applicants in both the applications supported the order passed by the Additional Sessions Judge and submitted that as the investigation is completed and charge-sheet is filed, further incarceration of the present non-applicants is not required. Therefore, the observation of the trial Court is that, initially there was no averments in the FIR as to the ill-treatment for the demand of money afterthought that averments are made in statement under Section 164 of Cr.PC. Considering the variance in the statement and considering the fact that now investigation is completed and charge-sheet is filed, the further custodial interrogation or the incarceration of the present applicant is not required. In view of that, the application is rightly allowed by the Sessions Court, and no interference is called for.

9. After hearing learned counsel for the applicant as well as learned APP and learned counsel for the non-applicant

No.2 in the Criminal Application No.8/2024, and 2 and 3 in the Criminal Application No. 59/2023, I have perused the entire investigation papers. It is revealed from the investigation papers that initially the applicant was married with one lady by name Anita, whose statement is also recorded during the investigation. She also, in her statement, stated that after marriage she was also ill-treated by the present non-applicant No.2 in Criminal Application No. 8/2024, i.e., Rishubah, for the demand of money. She was also assaulted and forced for dissolution of marriage, and therefore, she started residing separately. As far as the recitals of the FIR in the present case are concerned, it reveals that the deceased and the non-applicant no. 2 got acquaintance with each other. They were communicating with each other. The non-applicant No.2 has also disclosed to his first wife that he is having a love affair with the deceased, and thereafter, when the first marriage was in existence, non-applicant No.2 Rushabh performed the marriage by abducting her from the lawful custody of her parents.

10. After marriage, she was wrongly confined by the non-applicant No.2 Rushabh and she was subjected for the ill-treatment by assaulting and harassing her. The fact of assault is further substantiated by the inquest panchanama, as during the inquest panchanama, the investigating officer as well as panchas both have noted the injuries on the person of the deceased. The death of the deceased was allegedly due to the poisoning. The post mortem notes also show that there were 13 injuries on her person. Prior to her death, i.e. one or two

days old injuries. As far as these injuries are concerned, there is no explanation from the accused. The post mortem report shows that all injuries were 1 to 2 days old before death. All abrasions were hard and rough surface, and all contusions were caused by hard and blunt surface. These all injuries as per the prosecution, were prior to the death of the deceased. The death of the deceased is due to the poisoning. The statements of various witnesses recorded during the investigation clearly show that the deceased was confined, and she was forced to call her parents and demand the money, and as she could not fulfill the demand, she was assaulted, and therefore, being fed up with the said ill-treatment, she consumed the poison, and the death of the deceased is caused. The query report which was made to the medical officer was replied by the medical officer, which also shows that there were injuries found on the person of the deceased, and death of the deceased is due to the poisoning, as the said poison herbicides in nature, and the side effect of the said poison were also noticed by the medical officer on her person.

11. On perusal of the order passed by the Additional Sessions Judge by releasing the non-applicant No.2 Rushabh in Criminal Application No. 8/2024 is perused. On perusal of the said order, it reveals that the Additional Sessions Judge has given importance to the fact that the deceased did not disclose at the earliest that she was ill-treated for the demand of Rs. 5 lakh, and subsequently in a statement of 164 of Cr.PC. of the informant, the informant has disclosed the same. Except that reason, there is no other reason mentioned by the

Additional Sessions Judge, he has not given any reasons as to the injuries which were found on the person of the deceased. In fact, the statement of the first wife of the non-applicant No.2 as the injuries which are noticed at the time of the inquest panchanama as well as at the time of the post mortam report are also ignored by the Additional Sessions Judge by releasing the non-applicant No.2 Rushabh on bail. Admittedly, the non-applicant no. 2, Rushabh, was charged with an offence punishable under Sections 498-A, 306, 304-B, 506, 494 read with Section 34 of the Indian Penal Code. The death of the deceased is caused within the seven years of marriage and i.e. also in a suspicious condition.

12. Section 304-B deals with the dowry death which reads as under:

"304B. Dowry death. -- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Sub-Section (2) of Section 304B deals with the punishment which states that whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment of life.

13. In order to attract the provision under Section 304-B of IPC against the person for the offence of dowry death, the

prosecution has to establish death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances, such death should have occurred within seven years of marriage, the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband, and such cruelty or harassment should be on for in connection with the demand of dowry, and to such cruelty or harassment, the deceased should have been subjected soon before her death.

14. The expression "soon before her death" used in the substantive Section 304-B of IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not define anywhere.

15. By applying these ingredients to the present case, there is no dispute as to the fact that the death of the woman i.e. the deceased, was caused otherwise than in a normal circumstance when she was in the company of the present non-applicant No. 2. Such death also occurred within seven years of her marriage, and there is an allegation that she was subjected to cruelty or harassment by her husband, i.e non-applicant No.2 in Criminal Application No. 8/2024, and such cruelty or harassment was in respect of the demand of money, and that was also soon before her death.

16. The death of the deceased in the matrimonial home when she was in the company is also substantiated by the investigation papers as well as the post mortem report and

inquest panchanama, which shows injuries on the person of the deceased. Thus, as far as the non-applicant No.2 in Criminal Application No. 8/2024 is concerned, prima-facie case is made out against him. The Additional Sessions Judge, while releasing him on bail, observed as follows:

“It is the case of the prosecution that the deceased made the phone call to her grandmothers – Nirmala Shelkar and Narmada Anasane and informed him that the applicant accused ill-treating her and demanding her. In FIR it is not mentioned that the deceased said that the accused was demanding Rs. 5 lakh. The first time this aspect came into the statement, the informant was recorded under Section 164 of Cr.P.C. by the magistrate.

17. Similarly, in FIR it is not mentioned that when the informant first time seen the deceased to the hospital, she noticed injury marks all over the body of the deceased and blood was oozing from her nose and vagina. The investigation officer has issued a letter to get CDR and SDR of the mobile numbers. However, till today, the prosecution has not been able to produce the said CDR and SDR. All the allegations are based on telephonic conversations, but no CDR and SDR are produced on record by the prosecution. It is only the case of the informant that in this case Section 302 of the IPC is applicable; however, it is not the case of prosecution that in this case the investigating officer has found evidence, which is sufficient to apply Section 302 of IPC against the accused person.

18. Thus, on perusal of the order, it is apparent that Section 4 has only considered that there is some variance in the statements that initially the fact of the demand of Rs. 5 lakhs is not mentioned in the FIR. It is pertinent to note that the Sessions Judge has ignored that while drawing the inquest panchanama as well as while conducting the post mortem report, the Medical Officer as well as panchas have noticed some injuries, i.e. 13 in number, on the person of the deceased. The deceased telephonically informed her mother as well as her grandmother that she is tortured by the present non-applicant No.2 for the demand of money. This fact is also substantiated by the statement of the first wife of the non-applicant No. 2, Rushabh, who has also stated that she was similarly tortured by the present non-applicant No. 2, and thereafter, he developed the relationship with the deceased; she was forced to dissolve the marriage. This fact is completely ignored by the Additional Sessions Judge while releasing the present non-applicant No.2 Rushabh, on bail. Thus, the material aspect of the involvement of the present non-applicant No.2 is that there is proximity and a nexus between the two acts, which is apparent from the investigation papers, which were also ignored by the Additional Sessions Judge.

19. As far as Criminal Application No. 59/2023 is concerned, on perusal of the order passed by the Additional Sessions and the investigation papers, there is no dispute as to the fact that general allegations are made against the mother-in-law and brother-in-law, and therefore, they are released on

bail. Therefore, as far as the order as to the anticipatory bail is concerned, no interference is called for.

20. As far as the law regarding cancellation of bail is concerned, it is well settled that consideration for grant of bail and cancellation of bail are different. As far as the cancellation of bail is concerned, the considerations for cancellation of bail are considered by the Hon'ble Apex Court in catena of decisions including in *Myakala Dharmarajam and others Vs State of Telangana and another* [2020 (2) SCC 743], wherein it is held that "it is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail".

21. In *Deepak Yadav Vs State of U.P* [2022 (2) Mh.L.J. (Criminal) 196], wherein also it is held there is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves balancing numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important.

22. The Hon'ble Apex Court laid down illustrative circumstances where the bail can be cancelled are as follows:-

- a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.
- c) Where bail has been granted on untenable grounds.
- d) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- e) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.
- f) When the order granting bail is apparently whimsical, capricious and perverse on the facts of the given case.

23. In the light of the above well settled legal position, if the facts of the present case are taken into consideration, admittedly, the Sessions Court has not considered the material which was collected during the investigation and especially

the statements of the witnesses, the circumstances that the injuries which are found on the person of the deceased, which were caused prior to her death, her disclosure to her mother as well as to the grandmother and their statements, the Sessions Court has only considered that there is some variance in the statement. However, this surrounding circumstances, which substantiate the allegations, are totally ignored by the Sessions Court. Moreover, it is apparent that there is no single whisper in the order passed by the Sessions Court why the Court is granting bail to the applicant.

24. It is also well settled that merely because the custodial interrogation is not required is not sufficient to grant bail. At the same time, merely because the State is opposing the bail is also not sufficient to reject the bail. Both have to substantiate the contention with relevant material.

25. In the light of the above well settled principles, if the facts of the present case as considered, admittedly, the Criminal Application No. 08/2024 deserves to be allowed, considering that the order of grant of bail is passed by the Additional Sessions Judge, Washim, by ignoring the relevant material, which shows the involvement of the present non-applicant no. 2 in the alleged offence.

Whereas the application No. 59/2023 seeking the cancellation of bail of mother-in-law and brother-in-law deserves to be rejected. In view of that, I proceed to pass the following order.

a] The Criminal Application is 8/2024 is allowed.

- b] The bail granted to present non-applicant No.2 in application No. 8/2024 by order dated 12/10/2023 is hereby cancelled.
- c] The non-applicant No. 2, Rushabh Kailsh Dhadhare, shall surrender before the Court on 13/03/2025.

26. The Criminal Application No. 59/2023 is hereby **rejected.**

[URMILA JOSHI-PHALKE, J.]