

Chetanbhai Natwarlal Shrimadi vs State Of Gujarat on 28 February, 2018

Author: J.B.Pardiwala

Bench: J.B.Pardiwala

R/CR.MA/4178/2018

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION NO. 4178 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | Yes |
| 2 | To be referred to the Reporter or not ? | No |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |

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CHETANBHAI NATWARLAL SHRIMADI

Versus

STATE OF GUJARAT

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Appearance:

DARSHIT R BRAHMBHATT for the PETITIONER(s) No. 1

DARSHIT R BRAHMBHATT(8011) for the PETITIONER(s) No. 2,3

MS. THAKKAR, ADDL. PUBLIC PROSECUTOR for the RESPONDENT(s)

No. 1

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CORAM: HONOURABLE MR. JUSTICE J.B. PARDIWALA

Date : 28/02/2018

ORAL JUDGMENT

1. This is an application at the instance of the original accused Nos. 3,4 and 5 for anticipatory bail in connection with R/CR.MA/4178/2018 JUDGMENT a first information report registered with the Nadiad West Police Station dated 30th October, 2017 being I-C.R. No.48 of 2017 for the offence punishable under sections 302, 304(B), 203 read with 114 of the Indian Penal Code and sections 3 and 4 of the Dowry Prohibition Act.

2. The first information report came to be lodged by the father of the deceased. The first information report is extracted hereunder;

"I, Jayantibhai Devchandbhai Shrimali, age - 59 years, occupation - retired, resident of 29, Ashray Park Society, Behind Vasudev Marble, Pij Road, Nadiad, Mobile no. 9979259283.

I state that I am residing at the above mentioned address with my family. I was working as a Forest Officer in the Nadiad Division and superannuated on 30/04/2016, and at present, I am living a retired life. I have two children. One son and one daughter, namely, Bhavin and Neelam. Bhavin is elder and Neelam was younger to Bhavin.

The marriage of my daughter Nilamben was solemnized on 29/05/2015 with Nilay Kumar Natvarlal Shrimali, resident of B/12, Satyanarayan Society, Opp. Varia Prajapari Wadi, Juna Dumral Road, Nadiad as per the customs of our community. At the time of the marriage, I had given clothes and household articles to my daughter. After the marriage, my daughter was residing at her matrimonial home with her husband and mother-in-law Narmadaben Natvarlal Shrimali. Initially, the marriage life of my daughter was happy but after about three months of marriage, when my daughter used to visit my house, she told me that her husband is unemployed, and at present we are even unable to meet the expenses of the house. She also told me to help them until Nilay gets a job. Therefore, as my son-in-law did not had any job, with the purpose that they do not face any difficulty in their household expenses, I used to give ten to fifteen thousand rupees to my daughter every month as requested by her. Me and my other relatives frequently R/CR.MA/4178/2018 JUDGMENT visited her house and helped them financially so that they do not face any difficulty.

After six months of the marriage, when my daughter used to visit my house, she told me that Nilay is drinking liquor and he is pressurizing me to bring money from me. My mother-in-law Narmada Bahen is also harassing me regarding household work. She is taunting me by saying that you are fat, your father has not given anything at the time of marriage, we do not want to keep you and we are going to bring another

wife for Nilay. They are pressurizing me very much to bring money from you. Moreover, my jeth (Husband's elder brother) Chetanbhai Natvarbhai Shrimali working at Limkheda, my jethani (husband's elder brother's wife) Mamtaben Chetanbhai Shrimali working as a teacher in Rajupura village near Galteshwar and my nanand (husband's sister) Hetalben Bhavinbhai Shrimali, though are residing at Anand, yet they come to my house quite often during holidays on Saturday and Sunday and pick up quarrel with me regarding the household work and dowry and instigate my husband against me in order to drive me out of the house. Therefore, my husband is beating me too much. She told me that my in-laws have been harassing me too much and I am fed up due to their harassment. Though I am pregnant at present, my in-laws make me toil too much.' As my daughter used to tell this to me, my wife Kantaben, son Bhavin, Rasmika - wife of Bhavin and I used to appease her that your in-laws will mend their ways soon and you will have good life. We used to keep her at our house for some days and then send her back to her matrimonial home. I also used to visit her matrimonial home and persuade them to behave well with Nilam. Sometimes, when I used to visit the matrimonial home of Nilam on holidays, I also found Chetanbhai - jeth of Nilam, Mamtaben Chetanbhai - jethani of Nilam and Hetalben Bhavinbhai - nanand of Nilam there. I also told them to behave well with Nilam. Therefore, they told me that though your daughter is very fat, we have kept her. They used to pressurize me that during her Shrimant, you will have to give ornaments as demanded by us and also give gifts to our relatives. Moreover, Narmadaben - mother-in-law of my daughter stated that we do not want your daughter and she stated in my presence that get her abortion done. Therefore, with the intention that her matrimonial life R/CR.MA/4178/2018 JUDGMENT goes on well, I stated that I will do as stated by them. Despite the same, Nilay and his mother Narmadaben came to my house and stated that your daughter is fat and she is not doing any work and in this way they used to pressurize for divorce of my daughter. At the time of Shrimant ceremony of my daughter, I gave gold and silver ornaments to my daughter and son-in-law costing about ten lakhs as demanded by the in-laws of Nilam. After the shirmant ceremony, Nilam was brought to our house and son named Isan was born on 17/10/2016. I have also given jiyānu (gift given at the time of birth) of my daughter approximately of fifty thousand rupees as demanded by her in-laws. My daughter went to her matrimonial home but harassment of her husband and above mentioned in-laws continued. Nilam used to tell this to me when she used to come to my house. When I retired on 30/04/2016, I received money of my retirement benefits. The husband of Nilam and her mother-in-law pressurized and harassed her and sent her to my house to bring Rs, 20,0000/- from me in order to buy a house. Therefore, I told my daughter that we need to buy a new house. I will give you whatever money is left of my retirement benefits. After persuading her in this manner, I gave her Rs. 25,000/- in cash and I also made fixed deposit of one lakh rupees in the name of my daughter in BOB, Ashram Road Branch, Nadiad. I used to give financial support to my daughter so that her matrimonial life goes on well. But the in-laws of my daughter took disadvantage of my support and they used to harass my daughter to bring money from me.

The house in which I am residing in Nadiad at present, is a newly purchased house and we vacated the old house located in Pagar Society, Pavanchakki Road, Nadiad. My son-in-law Nilaykumar quarreled with my daughter in order to get the old house registered in his name and she was even beaten. My daughter informed me regarding this. Therefore, I had even told that I will transfer that house in his name. Despite the same, as my daughter was fat, my son-in-law did not like her and she was very much harassed to send her out and get divorce and even the above named persons were instigating my son-in-law in order to send my daughter Nilam out of house and they were harassing her too much.

Yesterday on 29/10/2017, I went to Ganj Bazar in Nadiad R/CR.MA/4178/2018 JUDGMENT in the evening and when I went back to my house at quarter past six o'clock in the evening, my son Bhavinkumar came to my house in very much frightened condition and he informed me that 'I received phone call of Nilaykumar on my phone before some time and he told me that something has happened to Nilam and it is informed that you come to my house with your family members. Phone call of Nilam was even received at one o'clock in the afternoon and she wanted to tell something in frightened tone. But I had felt that someone had snatched away her phone. As I was out, I had told my wife to go to the house of Nilamben.' As he stated this, I was worried about my daughter Nilam and my wife, my son Bhavin, daughter-in-law Rasmikaben and I left for the house of Nilam. In the meantime, my son received phone call from my son-in-law Nilaykumar and as he told us to come to Sanjay Hospital, Nadiad, we went to Sanjay Hospital, Nadiad at half past six o'clock yesterday. My daughter was lying unconscious over there and she was not speaking anything. I met my son-in-law, Chetanbhai - jeth of Nilam, Mamtaben - jethani of Nilam and other persons and they told me that when Nilam was mopping the floor at the upper floor in our house at quarter past six o'clock in the evening, she fell down and became unconscious. As they stated this and as my daughter was fat, I thought that she might have felt uneasy and therefore, I stayed in Sanjay Hospital, Nadiad. In the meantime, the doctor of Sanjay Hospital examined Nilam and stated that take her to bigger hospital. Therefore, we

- the family members of Nilam and above mentioned persons of her matrimonial home, got together and took Nilam to Mahagujarat Hospital, where the doctor examined Nilam and informed that she has died and as it was told to take her to Nadiad Civil, we - all the above mentioned persons took her to Nadiad Civil. My daughter had black contusion marks from front side of throat extending till both the ears. The doctor informed the police regarding this and as it was night time yesterday, postmortem of dead body of my daughter Nilam was not performed. But, as postmortem of her dead body was performed by panel team of doctors of Nadiad Civil, the cause of death was given that Nilam had died due to suffocation due to strangulation of throat. Therefore, I was surprised. Though my daughter committed suicide by strangulation due to harassment of her in-laws, the above mentioned persons of her matrimonial home, R/CR.MA/4178/2018 JUDGMENT stated that

Nilam became unconscious as she fell down while mopping and they did not inform me the real cause of Nilam's death.

My daughter Nilam, aged 27 years, was given too much physical and mental torture by her husband, mother-in-law Narmadaben, jeth Chetanbhai, jethani Mamtaben and nanand Hetalben Bhavinbhai regarding household work and dowry and for getting divorce as my daughter was fat and as they did not want to keep her and they forced my daughter to commit suicide and being fed up of their harassment, my daughter died by strangulating her throat yesterday on 29/10/2017 at her house before quarter past six o'clock in the evening. Therefore, this is my complaint to take legal action against all the above mentioned persons.

The facts above of my complaint are true and correct as dictated by me. "

3. Thus, it appears that the deceased was married to the original accused No.1, namely, Nilaykumar Natwarlal Shrimali. The marriage was solemnized on 29th May, 2015. In the marriage, a son was born, namely, Isant. In the first information report, it has been alleged that the deceased was not happy at her matrimonial home. There was incessant harassment at the end of the husband, mother-in-law and the applicants herein. I take notice of the fact that the applicant No.1 is the brother of the husband, the applicant No.2 is the wife of the applicant No.1 and the applicant No.3 is the married sister of the husband. It is also alleged that there was demand for dowry and as the deceased was quite fat, the husband, over a period of time, developed an aversion for her. On the date of the incident, the deceased was quite disturbed due to the harassment at the end of the accused persons and took a drastic step of committing suicide by hanging from a ceiling fan with the aid of a Dupatta.

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4. The applicants herein came to be arrested by the police in connection with the alleged offence. The applicants preferred the Criminal Misc. Application No.1321 of 2017 for regular bail in the court of the learned Principal Sessions Judge, Kheda at Nadiad. It appears that while the court concerned heard the regular bail application filed by the applicants herein, it also jointly heard the Criminal Misc. Application No.1320 of 2017 filed by the mother-in-law of the deceased. By a common order dated 7th November, 2017, the bail application of the applicants herein came to be allowed whereas the bail application of the mother-in-law came to be rejected. The reasonings assigned by the court below while passing the common order dated 7th November, 2017 are extracted hereunder;

"4) Ld. Advocate Mr. D.R. Brahmabhatt for both the accused have mainly contended that this is first bail application of the applicants. The applicants of Cr. M. A. No.1321/2017 reside outside of Nadiad and they are government servants. Amongst the applicants, applicant no.1 is brother-in-law (Jeth) of the deceased, no.2 is sister-in-law (Jethani) and no.3 is brother-in-law (Nandoi), whereas, applicant of Cr. M. A. No.1320/2017 is mother-

in-law of the deceased. The cause of action and mens rea are not shown anywhere in the said complaint and cause of suicide is also not mentioned in it. There are only vague allegations. No dowry has been demanded. The applicants are totally innocent and they are falsely implicated. Amongst the applicants of both the applications, three accused are ladies. In the circumstances, it is prayed to release the applicants on appropriate terms and conditions.

5) Ld. P.P. Mr. P.S. Dhora for the state has mainly contended that the applicant of Cr. M.A. No.1320/2017 is mother-in-law of the deceased, history given before the doctor involves the applicants. As per P.M. note, death is R/CR.MA/4178/2018 JUDGMENT caused due to hanging. Married life was of two years. There is one child and besides this, the incident has happened in her in-laws house at Nadiad only. Investigation is pending and therefore, it is prayed not to release the applicants on bail.

6) Looking to the case papers, the complainant Jayantibhai Devchandbhai Shrimali has lodged complaint before the police stating that he stays at Nadiad and his children includes Nilamben. Nilamben got married to Nilaykumar Natvarlal Shrimali on 29/05/2015 at Nadiad and his daughter was residing with her husband and her mother-in-law Narmadaben. In the beginning, everything was going well upto three months. When his daughter came to the house of the complainant, she told that Nilay has lost his job and told to help her, therefore, the complainant gave her ten to fifteen thousand rupees. After six months of marriage, his daughter came to his house and told that Nilay is addicted to liquor and he pressurizes to bring money from you. My mother-in-law harasses me regarding household work and says that you are fat and your parents haven't given anything on the occasion of the marriage. She stated that she wants to get another marriage of Nilay to be done and pressurizes me to bring money. Brother-in-law (Jeth) Chetanbhai, sister-in-laws (Jethani) Mamtaben and (Nanand) Hetalben used to come on the weekends of Saturday-Sunday and used to instigate Nilay regarding household work, dowry and to drive her out from the house. Nilay beats her up and also does not provide proper food to eat. Thereafter, he used to send his daughter back to the in-laws house after persuading her. The said persons had taken jewellery of about ten lakh rupees forcefully at the time of Shrimant and also told the complainant that your daughter is fat and we do not want her and stated to get her foetus aborted. He gave Jiyanu for new born baby boy of fifty thousand rupees. As the complainant retired from the service, he told to give twenty lakh rupees to Nilam out of the amount he received. Her husband and mother-in-law pressurized her and sent her to the house of the complainant. But the complainant could not give the money as he wanted to buy new house. He sent her daughter back with twenty five thousand rupees. He deposited one lakh rupees in Fixed Deposit at Bank of Baroda, Ashram Road Branch, Nadiad in the name of his daughter. He was stated to transfer the present house in R/CR.MA/4178/2018 JUDGMENT the name of his son-in-law and quarreled for the same. They were harassing her to get divorce and to make her get out as she was fat. Meanwhile, Bhavinbhai, son of the complainant met him on 29/10/2017 and informed that Nilaykumar telephoned and stated that something has happened to Nilam. At one o'clock in the afternoon, Nilam made telephone. She was found scarred and she wanted to say something but he felt that phone was snatched from her. The complainant, his wife, son and daughter-in-law got out and went to Sanjiv Hospital. His daughter was unconscious. The accused stated him that Nilam fell down when she was mopping on the upper floor and went unconscious. The doctor of Sanjiv Hospital told to take Nilam to big hospital and

therefore, all took Nilam to Mahagujarat Hospital, there doctor checked her and declared her dead. His daughter had black marks from front part of the throat till both ears. Thereafter, she was taken to the Civil Hospital, where it was stated by the doctor in P.M. that cause of death was asphyxia due to strangulation. Though Nilam had strangulated, the in-laws persons had stated that Nilam fell down when she was mopping on the upper floor and went unconscious. Thus, as her daughter was fat and they did not want to keep her with them, they subjected her to physical and mental torture in order to have divorce and thus, compelled her to commit suicide.

7) Considering all the facts mentioned here-above, it is alleged that the complainant's daughter Nilam has committed suicide for the reasons mentioned in the complaint and statements of the witnesses are corroborating it. It is mentioned in the P.M. note that death was caused due to strangulation, which is taken into consideration. The applicant no.1 - Brother-in-law (Jeth) and no.2 - Sister-in-law (Jethani) of Cr. M.A. No.1321/2017 are residing at Limkheda and the applicant no.3 - Sister-in-law (Nanand) is residing at Anand, that means, all these three applicants are not residing at Nadiad and it is alleged that they tortured her on holidays, which are taken into consideration. Whereas the applicant of Cr. M.A. No.1320/2017, Narmadaben is mother-in-law of the deceased and it appears from the police investigation papers that she was residing with Nilam at Nadiad. Considering all the above mentioned facts, it is noted that the role of the applicants of Cr. M.A. No.1320/2017 are different to some extent from the R/CR.MA/4178/2018 JUDGMENT applicant of Cr. M.A. No.1321/2017.

8) It is settled principle of law that the evidences are not to be appreciated at the time of deciding the bail application by analyzing it at length, but it is required to find as to whether there is prima-facie case against the applicant or not and whether the applicant is entitled to be released on bail or not. Evidence in the present application is not appreciated after analyzing it. The observations made regarding the said application are limited to the decision as to whether the bail application should be allowed or not and it is hereby clarified that the said observations shall not affect the trial of the case.

9) Considering the facts, details, circumstances and role of the applicants of both the applications, it does not deem just and reasonable to exercise judicial discretion conferred under Section - 439 of the Cr. P.C. against the applicant of Cr. M.A. No.1320/2017, whereas it deems just and reasonable to exercise judicial discretion conferred under Section - 439 of the Cr. P.C. against the applicants of Cr. M.A. No.1321/2017 and to release them on several strict conditions, following order is passed in the interest of justice.

ORDER

1) Criminal Miscellaneous Application No.1320/2017 is hereby rejected, whereas, Criminal Miscellaneous Application No.1321/2017 is hereby allowed.

2) The applicants of Criminal Miscellaneous Application No.1321/2017 are hereby ordered to be released on regular bail for the punishable offences under Section-498(A), 306, 114 of I.P.C. in the case of I- C.R. No.489/2017 registered with Nadiad West Police Station on furnishing bail bond of

Rs.10,000/- (Rupees Ten Thousand Only) each and surety of like amount subject to following conditions.

Conditions

1. Not to temper with the evidences of the prosecution and not to make direct or indirect attempts to induce the witnesses by temptations or allurements.

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2. To maintain peace and tranquility and not to get involved in any other offences.

3. To furnish present as well as permanent residential address in the bail bonds before Ld. Lower Court and not to change the same without prior permission of the court having jurisdiction. Applicants to produce their mobile numbers and land-line numbers and not to change the same without permission of the Honorable Court.

4. Not to leave the State of Gujarat without prior permission of this Court.

5. To submit Original Passport before the Ld. Lower Court within three days after release on bail, if any, and if not having Passport, Affidavit regarding the same before the Concerned Lower Court within three days.

6. To remain present before investigating officer as and when called for and to co-operate in the police investigation for the offence.

7) The applicant no. 1 shall have to mark his presence before the concerned Police Station during 1st to 5th of every English month between 10:00 a.m. and 02:00 p.m. till Charge-sheet is filed and the investigating officer shall forward copy of the record wherein the applicant has marked his presence and if not remained present, report thereof to the Ld. Lower Court from 6th to 10th of concerned English month and the applicant as well as the investigating officer shall follow this instructions strictly."

5. It appears from the materials on record that the police completed the investigation and filed charge-sheet for the offence punishable under sections 498A, 302, 304B, 203 read with 114 of the Indian Penal Code and sections 3 and 4 of the Dowry Prohibition Act. It appears that at the end of the investigation, the police reached to the conclusion that the case is one of homicidal death and not suicidal death. In such circumstances, the first informant, i.e., the father of the R/CR.MA/4178/2018 JUDGMENT deceased preferred an application under section 439(2) of the IPC for the cancellation of bail of the three applicants. The Criminal Misc. Application No.1513 of 2017 filed by the original first informant for the cancellation of bail of the three applicants herein came to be allowed by the Principal Sessions Judge, Kheda at Nadiad vide order dated 6th February, 2018. The reasonings assigned by the court below while cancelling the bail of the three applicants herein are extracted hereunder;

"Looking to the above reference, the present application has not been made by the prosecution. But, it has been made on behalf of the original complainant and as discussed above, according to the judgment of Hon'ble Supreme Court, the original complainant can prefer an application for cancellation of bail. In these circumstances, Hon'ble High Court has also observed that, if the more serious offence is revealed, the prosecution should make an application to cancel the bail or for modification of order. Looking to all these facts, the offence under section-306 of I.P.C. was constituted, wherein the imprisonment of 10 years was provided. Now, the offence is under section-302 of I.P.C. which provides the punishment of life imprisonment or death. In such circumstances, as the more serious offence is revealed, the original complainant has made the present application, which has been taken into consideration.

(8) The following grounds and issues have been taken into account to decide the application for cancellation of the bail.

1. When aforesaid respondents were released on the bail earlier, they were charged u/s 306 of the I.P.C. and maximum punishment for the said offence is 10 years.
2. Thereafter, police investigation has been conducted and it is revealed during the investigation that offence u/s 302 of the I.P.C. is made out and accordingly, report to add section was filed in the lower court and the same was granted. Thereafter, charge-sheet has been also filed against present R/CR.MA/4178/2018 JUDGMENT applicants and other co-accused u/s 302 of I.P.C.
3. The applicants were charged u/s 306 of the I.P.C.

when their earlier bail application was decided. The strangulation was shown as cause of death in the P.M. note inter alia it was also mentioned therein that final cause of death could be known after receiving viscera and histopathology report. Thereafter, it has been stated in the P.M. note on 09/01/2018 that looking to histopathological report and F.S.L. report, final cause of death was strangulation. Under these circumstances, final cause of death was not mentioned in the P.M. Note at the time of deciding earlier bail application and only probable cause was mentioned. Whereas strangulation has been shown as final cause of death after receiving F.S.L. report, and the said fact has been taken into account.

4. Earlier, charge u/s 306 of the I.P.C. was levelled and maximum punishment for the said offence was 10 years. Now, section 302 of the I.P.C. has been added, and maximum punishment for the said offence is life imprisonment and death penalty. Under these circumstances, more serious charge has been revealed on the completion of police investigation than was found earlier.
5. The bail was granted for the offence u/s 306 of the I.P.C. - less serious offence earlier, whereas more serious offence is being made out and respondents have been charged u/s 302 of the I.P.C.

6. As per the aforesaid judgement of the Hon'ble High Court, original complainant has filed application for cancellation of the bail. As per the judgment of Hon'ble Supreme Court, original complainant can make this nature of application.

(9) It is a well established principle of the law that evidences are not required to be analyzed in depth and evaluated while deciding bail application. But, it is to be seen as to whether prima facie case is made out against the accused or not and as to whether applicant is liable to be released on bail or not. The evidences have not been analyzed and evaluated in connection with the present application. The observations made in connection with aforesaid application are restricted to deciding as to whether this bail application should be granted or not. It is clarified that trial of the case will not R/CR.MA/4178/2018 JUDGMENT bear any effect of these observations.

(10) Considering all the facts, issues and reasons discussed above, and considering the fact that, now more serious offence has been revealed to have occurred and the final cause of death is mentioned as strangulation in the P.M. note after granting the previous bail application, the bail granted to the present opponents in Criminal Miscellaneous Application NO.1321/2017, is liable to be rejected. Therefore, below final order is passed in the interest of justice.

ORDER (1) The bail, granted to the present opponents Nos. 1 to 3 as per the order dated: 07/11/2017 passed in Criminal Miscellaneous Application No.1321/2017, is hereby cancelled.

(2) The above opponent Nos. 1 to 3 shall surrender themselves before the Investigation Officer / Competent Officer, within 15 days."

6. As the bail came to be cancelled by the Sessions Court, the applicants herein apprehended arrest once again by the police. In such circumstance, the three applicants preferred the Criminal Misc. Application No.171 of 2018 for anticipatory bail in the Sessions Court. The application filed by the applicants for anticipatory bail came to be rejected by the court below by order dated 9th February, 2018. The reasonings assigned by the court below while rejecting the anticipatory bail application are extracted hereunder;

"(6) The applicants had earlier filed Criminal Miscellaneous Application No. 1321/2017 u/s 438 of Cr.P.C. for anticipatory bail in this court and the same was related to the offence u/s 306 of the I.P.C. This court granted the same on 07/11/2017. Thereafter, sections 302, 304(B) of the I.P.C. were added during the police investigation. The charge sheet was filed in the lower court in this regard. Therefore, original complainant R/CR.MA/4178/2018 JUDGMENT Jayantibhai Devchandbhai Shrimali filed Criminal Miscellaneous Application no. 1513/2017 against these applicants u/s 439(2) of Cr.P.C. for cancellation of bail in this court. This court granted the said application of the complainant seeking cancellation of the bail vide order dated 06/02/2018 and cancelled anticipatory bail of the applicants and ordered them to surrender before the Investigating Officer/Competent Authority within 15 days.

The following grounds and issues were taken into account to decide application for cancellation of the bail in para no. 8.

(8) The following grounds and issues have been taken into account to decide the application for cancellation of the bail.

1. When aforesaid respondents were released on the bail earlier, they were charged u/s 306 of the I.P.C. and maximum punishment for the said offence is 10 years.

2. Thereafter, police investigation has been conducted and it is revealed during the investigation that offence u/s 302 of the I.P.C. is made out and accordingly, report to add section was filed in the lower court and the same was granted.

Thereafter, charge-sheet has been also filed against present applicants and other co-accused u/s 302 of I.P.C.

3. The applicants were charged u/s 306 of the I.P.C. when their earlier bail application was decided. The strangulation was shown as cause of death in the P.M. note interalia it was also mentioned therein that final cause of death could be known after receiving viscera and histopathology report.

Thereafter, it has been stated in the P.M. note on 09/01/2018 that looking to histopathological report and F.S.L. report, final cause of death was strangulation. Under these circumstances, final cause of death was not mentioned in the P.M. Note at the time of deciding earlier bail application R/CR.MA/4178/2018 JUDGMENT and only probable cause was mentioned.

Whereas strangulation has been shown as final cause of death after receiving F.S.L. report, and the said fact has been taken into account.

4. Earlier, charge u/s 306 of the I.P.C. was levelled and maximum punishment for the said offence was 10 years. Now, section 302 of the I.P.C. has been added, and maximum punishment for the said offence is life imprisonment and death penalty. Under these circumstances, more serious charge has been revealed on the completion of police investigation than was found earlier.

5. The bail was granted for the offence u/s 306 of the I.P.C - less serious offence earlier, whereas more serious offence is being made out and respondents have been charged u/s 302 of the I.P.C.

6. As per the aforesaid judgement of the Hon'ble High Court, original complainant has filed application for cancellation of the bail. As per the judgment of Hon'ble Supreme Court, original complainant can make this nature of application.

(7) After aforesaid Criminal Miscellaneous Application No. 1513/2017 was decided, applicant filed present application u/s 438 of Cr.P.C. for anticipatory bail wherein present applicants are charged u/s 302 of the I.P.C.

(8) The following issues and grounds have been taken into account while deciding present bail application.

1. The reason no. 1 to 6 mentioned in para 8 of Criminal Miscellaneous Application No. 1513/2017 seeking cancellation of bail have been taken into account.

2. The order granting anticipatory bail to the applicants for the offence u/s 306 of the I.P.C. was passed earlier, but thereafter, as stated above, application seeking cancellation of bail was granted. The section 302 of the I.P.C was added. As the said offence was more serious, the bail was cancelled.

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3. When application for anticipatory bail was granted, charge u/s 306 of the I.P.C. was levelled, whereas charge u/s 302 of the I.P.C. for more serious offence has been now levelled.

4. The final opinion has been given in the P.M. note in January, 2018 after receiving F.S.L. report that deceased died due to strangulation.

5. Maximum punishment for the said offence is life imprisonment or death penalty.

6. Further, other co-accused Narmadaben w/o.

Natwarlal Shrimali filed Criminal Miscellaneous Application No. 1320/2017 and Criminal Miscellaneous Application No. 118/2018 in this court, and the same were rejected by this court. Thereafter, said accused filed Criminal Miscellaneous Application No. 27713/2017 before Hon'ble High Court and the same was withdrawn. Thereafter, other co-accused Nilaykumar Natwarlal Shrimali, who is the husband of the deceased, filed Criminal Miscellaneous Application No. 150/2018 in this court, and the said application was rejected by this court on 08/02/2018. All these facts have been taken into account.

7. The applicants have been charged for serious nature of offence.

(9) It is a well established principle of law that evidences are not required to be analyzed in depth and evaluated while deciding bail application. But, it is to be seen as to whether prima facie case is made out against the accused or not and as to whether applicant is liable to be released on bail or not. The evidences have not been analyzed and evaluated in connection with the present application. The observations made in connection with aforesaid application are restricted to deciding as to whether this bail application should be granted or not. It is clarified that trial of the case will not bear any effect of these observations.

(10) Thus, in view of aforesaid all the facts, gravity of the offence, aforesaid issues and grounds and in entirety, as it does not appear to be just, reasonable and appropriate to use judicial discretion in favour of the R/CR.MA/4178/2018 JUDGMENT applicants u/s 438 of Cr.P.C., the following final order is passed.

ORDER The bail application being Criminal Miscellaneous Application No. 171/2018 is rejected."

7. In such circumstances, referred to above, the applicants have come up before this Court with a prayer for grant of anticipatory bail.

8. The facts emerging from the materials on record are that the first information report was registered for the offence punishable under sections 498A, 306 read with 114 of the IPC and sections 3 and 4 of the Dowry Prohibition Act. At the time when the first information report was registered, the case of the first informant was very specific. The case of the first informant was that his daughter, i.e, the deceased had committed suicide at her matrimonial home on account of the incessant harassment and torture at the end of the accused persons. On completion of the investigation, the charge-sheet, ultimately came to be filed for the offence of murder, or in the alternative, for the offence of dowry death. The three applicants were already enlarged on regular bail by the Sessions Court. It is only when the charge-sheet came to be filed for the offence of murder as well as dowry death that the first informant thought fit to file an application to get the bail of the three applicants cancelled. Ultimately, the Sessions Court thought fit to cancel the bail. The three applicants herein, once again, preferred an application for anticipatory bail before the Sessions Court, which came to be rejected. It appears that while passing the order of cancellation of bail, the court below suspended the operation of the order for few days R/CR.MA/4178/2018 JUDGMENT to enable the applicants to avail of appropriate remedy before the appropriate forum in accordance with law.

9. In such circumstances, referred to above, I inquired with the learned APP as to on what basis the Investigating Officer filed the charge-sheet for the offence of murder punishable under section 302 of the IPC as well as for the offence of dowry death punishable under section 304B of the IPC. I had to put this question to the learned APP because at the time when the applicants herein were released on regular bail by the court below, the postmortem report was very much before the Sessions Court. The cause of death assigned in the postmortem report, on receipt of the Histopathological report is cardiorespiratory arrest due to mechanical asphyxia following strangulation. The learned APP clarified that the Investigating Officer had a talk with the Medical Officer as regards the fact whether the case is one of suicidal strangulation or homicidal strangulation. According to the learned APP, the Medical Officer, with whom, the Investigating Officer had a talk, prima facie, expressed his opinion that the case is one of homicidal death and not suicidal. I inquired with the learned APP whether there is anything in writing in this regard.. To put it in other words, whether the Investigating Officer has obtained any such opinion from the concerned medical officer in writing. The learned APP, after taking instructions from the Investigating Officer, submitted that there is no such opinion in writing. It was just an oral discussion between the Investigating Officer and the doctor concerned. According to the learned APP, in such circumstances, ultimately when time came to file the charge- sheet, the same was filed for the offence of murder.

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10. Mr. Brahmhatt, the learned counsel appearing for the applicants submitted that there is nothing on record on the basis of which it could be said that the case is one of homicidal death.

According to him, the theory which is now being put forward by the prosecution that all the accused persons, together, strangled the deceased to death by a Dupatta, is an afterthought. The postmortem report, prima facie, would indicate that the case is one of suicide by hanging. Mr. Brahmhatt, at this stage, invited my attention to the two statements of the independent witnesses residing in the neighbourhood. According to Mr. Brahmhatt, these two statements of the independent witnesses completely rules out the theory of homicidal strangulation. The two statements, which the learned counsel for the applicants is referring to, are one of Manibhai Madhavbhai Maheriya recorded on 30th October, 2017 and the another one is of his son Ravikumar Manibhai Maheriya recorded on 30th October, 2017. The statement of Manibhai is extracted hereunder;

"My name is Manibhai Madhavbhai Maheriya, age 63, Occupation : Retired, resident of B/5, Satya Narayan Society, Opp. Sharda Mandir School, Nadiad, Ta.Nadiad, Mo.No. 95868 78110.

On being personally asked, I state that I am residing at the above mentioned address alongwith my family. Presently, I live retired life. I am native of Karoli, Ta.Nadiad. I have one son and one daughter. I have studied upto MA Part-1.

Today as you stated me the facts of the complaint being I.C.R. No.48/2017 registered at Nadiad (W) Police Station under sections-498(a), 306, 304/B, 114 of the IPC and Sections-3, 4 of the Dowry Prohibition Act, I state that Narmadaben Natvarlal Shrimali is residing with her family R/CR.MA/4178/2018 JUDGMENT in the house no.12, in front of my house. She retired from service as a teacher. Her husband is expired. We are their neighbors since years. They have three sons and two daughters. Marriage of her son Nilay was solemnized before two years with Nilamben of Nadiad. Nilam was staying in her in laws' place. She has one son through married life with her husband. Nilay, Nilam and Narmadaben were staying in Nadiad and rest of the children of Narmadaben were staying out because of their service. But, they used to visit their house in Nadiad during Saturday-Sunday and public holidays and at that time they were staying together.

On 29/10/2017, I went to my village Karoli for the work of farming in the morning at around eight o'clock and returned in the evening at around Five o'clock. When I was at my home, at around six o'clock in the evening, Nilaybhai repeatedly shouted and called my son Ravi at his house. Thereafter, I stated my son to visit Nilay's house as I sensed some problem there. My son went there. There was an uproar. As Mamtaben, wife of Narmadaben's son Chetan came downstairs screaming, I doubted something untoward there. When I reached to first floor of Narmadaben's house, I found Nilam hanging from ceiling fan with dupatta in the bedroom of the first floor. Nilay was crying by holding her. At that time, other people of my society also came there. All of them together cut the dupatta tied with her neck and brought her down. Her family members took her for the treatment by the car of Kalpeshbhai Rohit residing in my society. Firstly, she was taken to Sanjay Hospital and thereafter to Mahagujarat

Hospital where the doctor declared her dead. I do not know as to why Nilam hanged herself. She did not have any quarrel or dispute with her husband or her in laws.

Such fact as dictated by me is true and appropriate as per my dictation."

11. The statement of Ravi is extracted hereunder;

"My name is Ravikumar Manibhai Maheriya, age 27, Occupation : Service, resident of B/5, Satya Narayan Society, Opp. Sharda Mandir School, Nadiad, Ta.Nadiad, R/CR.MA/4178/2018 JUDGMENT Mo.No. 98794 29098.

On being personally asked, I state that I am residing at the above mentioned address alongwith my family. I am serving as a Primary Teacher in village Desar, Ta.Savli and I am unmarried.

Today as you stated me the facts of the complaint being I.C.R. No.48/2017 registered at Nadiad (W) Police Station under sections-498(a), 306, 304/B, 114 of the IPC and Sections-3, 4 of the Dowry Prohibition Act, I state that Narmadaben Natvarlal Shrimali is residing with her family in the house no.12, in front of my house. She retired from service as a teacher. Her husband is expired. We are their neighbors since years. They have three sons and two daughters. Marriage of her son Nilay was solemnized before two years with Nilamben of Nadiad. Nilam was staying in her in laws' place. She has one son through married life with her husband. Nilay, Nilam and Narmadaben were staying in Nadiad and rest of the children of Narmadaben were staying out because of their service. But, they used to visit their house in Nadiad during Saturday-Sunday and public holidays and at that time they were staying together.

On 29/10/2017, I went for some work to village Chuva in the morning at around eleven o'clock and returned in the evening at around Five o'clock. When I was at my home, at around six o'clock in the evening, Nilaybhai shouted and called me at his house. My father informed me to visit Nilay's house as he sensed some problem there. When I reached there, I found Nilam hanging from ceiling fan with dupatta in the bedroom of the first floor. Nilay was crying by holding her. At that time, other people of my society and my father also came there. All of them together cut the dupatta tied with her neck and brought her down. Her family members took her for the treatment by the car of Kalpeshbhai Rohit residing in my society. Firstly, she was taken to Sanjay Hospital and thereafter to Mahagujarat Hospital where the doctor declared her dead. I do not know as to why Nilam hanged herself. She did not have any quarrel or dispute with her husband or her in laws.

Such fact as dictated by me is true and appropriate as per my dictation."

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12. Let me, at this stage, also look into the report filed by the Investigating Officer dated 9th November, 2017 in the court of the JMFC, Nadiad for addition of section 302 of the IPC in the first information report. The report is extracted hereunder;

" Outward No. 2383/2017 The Office of the Police Inspector, Nadiad - West Police Station, Dist. Kheda-Nadiad.

Date : 09/11/2017 To, The J.M.F.C., Nadiad Court, Nadiad.

Sub :- To include section-302 of I.P.C. in the F.I.R. being I

- C.R.No. 48/2017 registered at Nadiad - West Police Station, for the offence punishable u/s. 498(A), 306, 304- B, 114 of I.P.C. and section-3, 4 of Dowry Prohibition Act.

I - D.V.Baldaniya, Police Inspector, Nadiad - West Police station, respectfully submits that, In the case of I - C.R.No. 48/2017 registered with the Police Station, Nadiad - West, for the offence punishable u/s. 498(A), 306, 304-B, 114 of I.P.C. and section-3, 4 of Dowry Prohibition Act, the complainant Jayantibhai Devchandbhai Shrimali, residing at 29, Ashray Park Society, Pij Road, Nadiad, lodged the complaint before me on 30/10/2017 stating that after the passage of six months of the marriage, his daughter Nilamben W/o. Nilaykumar Shrimali, age : 27, residing at 12, Styanarayan Society, Opp. Sharda Mandir School, Nadiad, was subjected to physical and mental harassment regarding household works, to bring dowry of twenty lakhs, for having fat body and to give divorce by her husband Nilaykumar Natwarlal Shrimali, mother-in-law Narmdaben W/o Natwarlal Shankerlal Shrimali, her brother and sister-in-law Chetanbhai Natwarlal Shrimali and Mamtaben W/o. Chetankumar Natwarlal Shrimali, R/CR.MA/4178/2018 JUDGMENT presently residing at Limkheda, Dist. Dahod and Rajpura Teachers Quarters respectively and her sister-in-law Hetalben W/o. Bhavinkumar Shrimali, presently residing at A-2, Palav Tenement, Avsar Party Plot, Chikhodra Road, Anand, all are originally resident of B-12, Satyanarayan Society, Opp. Sharda Mandir School, Nadiad, and thereby, in-laws of Nilamben abetted one another in driving her to commit suicide. After being fed up with such harassment caused by her in-laws, she had strangled herself by tying Duppta with ceiling fan on the upper floor at her in-laws house at Satyanarayan Society, Nadiad, on 29/10/2017 at 18 :15 hours. When she was taken for the treatment by her in-laws, the doctor declared her dead on the same day at 19:00 hours. As the complainant lodged the complaint in this regard, I registered the offence against the said accused persons vide aforesaid register number and sections on 30/10/2017 at 12:30 O'clock and took over the charge of investigation. Thereafter, all the accused persons were arrested on 30/10/2017 at 17:30 O'clock and sent to judicial custody within time limit.

Today, on perusing the P.M. note of the deceased Nilamben W/o. Nilaykumar Shrimali, age : 27, residing at B-12, Satyanarayn Society, Opp. Sharda Mandir School, Nadiad, the Medical Officer, Civil Hospital, Nadiad, has opined that the deceased has died due to strangulation. Therefore, as the accused persons have killed the deceased by strangulating her and thereby, as the offence punishable u/s. 302 of I.P.C. has occurred, it is requested to include the section - 302 of I.P.C. in the complaint of the present offence. The P.M. note of the deceased is enclosed. It may be noted. Dt : 09/11/2017. "

13. Mr. Brahmbhatt, the learned counsel submitted that indisputably, the applicants are residing separately. On the date of the incident, being a weekend, the applicants decided to visit the house of their mother, and in such circumstances, they were present in the house when the deceased committed suicide. He submitted that the deceased committed suicide in her room situated on the first floor of the house by hanging herself from a ceiling fan with the aid of a Dupatta.

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14. The principal argument of the learned counsel appearing for the applicants is that the medical evidence on record does not rule out the possibility of suicide on the part of the deceased. In fact, according to the learned counsel, the medical evidence on record only points towards the theory of suicide. He submitted that there is nothing to indicate that the death was caused by strangulation, i.e. by pressing the neck of the deceased. Although, at this stage, the medical opinion, according to the Investigating Officer, in this case, is one of strangulation by suicide, yet if the entire medical evidence is looked into in details, it only substantiates the theory of suicide by hanging. The learned counsel appearing for the applicants vehemently submitted that it is the question of personal liberty of the applicants and if there is a reasonable doubt as regards whether the case is one of homicidal strangulation or suicidal hanging, then the benefit of doubt should go to the accused persons. The argument proceeds on the footing that if the court below did not find any case against the applicants so far as abetting the commission of suicide is concerned, then there is no reason to believe that the applicants would go to the extent of strangulating the deceased to death along with the husband and the mother-in-law of the deceased.

15. In such circumstances, referred to above, the learned counsel for the applicants pray that there being a considerable doubt as regards the alleged complicity of the accused persons in the crime, discretion may be exercised in favour of the applicants and they be granted the relief of anticipatory bail.

16. On the other hand, this application has been vehemently R/CR.MA/4178/2018 JUDGMENT opposed by Ms. Thakkar, the learned APP appearing for the State. The learned APP submitted that even if there is any doubt, at this stage, as regards whether the case at hand is one of homicidal death or suicidal hanging, the applicants do not deserve to be granted any relief. According to the learned APP the principle of rule of reasonable doubt will not apply at the stage of bail. This principle of rule of reasonable doubt will apply at the stage of trial, i.e. at the time when the Trial Court has to appreciate the overall evidence on record. At this stage, according to the learned APP,

all that needs to be looked into is whether there is a prima facie case against the applicants or not. The learned APP submits that the words used in section 437 Cr.P.C are "reasons to believe". According to the learned APP, the postmortem report does not completely rule out the theory of the deceased being strangled to death by the accused persons with a Dupatta. It is submitted that it is only when the expert witnesses will enter the witness box that the picture would be clear. At this stage, this Court may not go into the question whether the case is one of homicidal death or suicidal death.

17. This application has also been vehemently opposed by Mr. Tejas Barot the learned counsel appearing for the original first informant. I permitted Mr. Barot to make his submissions as I thought that his assistance would be of some help to this Court having regard to the issue in question. Mr. Barot submitted that the case is one of homicidal death. According to him, the injuries which have been noted in the postmortem report do point towards the theory of homicidal death or, at least, creates a considerable doubt in that regard. Mr. Barot also submitted that even if there is any doubt in this regard, at R/CR.MA/4178/2018 JUDGMENT this stage, the benefit should not go to the applicants. He submitted that the issue in question can be gone into by the Trial Court at the stage when the expert witnesses would enter the box. In such circumstances, referred to above, Mr. Barot prays that there being no merit in this application, the same be rejected.

18. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether I should exercise my discretion in favour of the applicants.

19. As noted above, the applicants were already released on regular bail by the order of the Sessions Court way back on 7th November, 2017. It is only when the Investigating Officer entertained a doubt in his mind after talking to the Medical Officer concerned that section 302 of the IPC came to be added and the bail of the three applicants was ordered to be cancelled. Thus, the only point for my consideration, at this stage, is whether there is any substance in the theory of homicidal death put forward by the prosecution.

20. Mr. Brahmbhatt invited the attention of this Court to one Division Bench decision of this Court, to which, I was a party. The Division Bench decision of this Court was rendered in a Criminal Appeal No.2233 of 2009 dated 29.04.2014 filed by a convict-accused, and in the said appeal, the issue was whether the case was one of homicidal death or suicidal hanging. While deciding the said appeal, the Division Bench explained the term asphyxia including suffocation, hanging and strangulation. As the learned counsel appearing for the R/CR.MA/4178/2018 JUDGMENT applicants seeks to rely upon the same, I deem it fit to extract the observations hereunder;

"26.1 What is asphyxia?

Asphyxia may be defined as primarily a state, or series of states, induced by an oxygen supply short of tissue needs. There are two forms of asphyxia. In the first form there is gasping for breath and marked cyanosis with retention of carbon dioxide and depletion of oxygen. In the second form there is no cyanosis, the

asphyxia being due to depletion of oxygen, or anoxaemia, without retention of carbon dioxide. Shallow rapid breathing is present which causes the anoxaemia and also an excessive elimination of carbon dioxide, with resultant failure of the respiratory centre. In this form there is no sign of respiratory distress.

Asphyxia may be produced in many ways, including the following:-

Occlusion of the air-passages by foreign bodies, the effects of scalding or corrosives, angioneurotic oedema, acute inflammation, membranous exudations, acute oedema of the glottis, laryngeal spasm, tumours, and abscesses.

Impediment to respiratory function by pressure on the chest wall, for example, by falls of debris, and in lift and pit-cage accidents.

Strangulation, suffocation, hanging, throttling, drowning, and the inhalation of irrespirable gases.

Paralysis of the respiratory nerves or muscles, or of the respiratory centre from injury or disease, or from the action of certain poisons, for example, morphine and barbiturates.

From causes operating from the lungs, or pulmonary circulatory system, for example, lung diseases, pleural effusions, pneumothorax, and pulmonary embolism.

26.2 What is suffocation?

R/CR.MA/4178/2018 JUDGMENT The term suffocation embraces the causes by which death is produced by impediment to respiration, not due to pressure externally and immediately applied to the windpipe. It does not, therefore, include deaths by hanging, strangulation, or throttling, but comprises deaths by smothering or overlaying, those due to foreign bodies in the larynx, trachea, and bronchi, and those due to irrespirable gases. Suffocation may, therefore, result from natural disease, accident, or violence suicidally or homicidally applied.

Death by suffocation may be caused:-

By prevention of the action of the muscles of respiration. By obstruction to the entrance of air through the mouth and nostrils.

By obstruction of the larynx, trachea, or bronchi. By inhalation of irrespirable gases.

26.3 What is hanging?

Hanging may be defined as that form of death which is caused by suspension of the body by a ligature which encircles the neck, the constricting force being the weight of the body. A frequent method is the use of a running noose. The proximate cause of death is asphyxia or comato-asphyxia.

The time occupied in the process of death depends chiefly upon two factors, the severity of the constricting force and the point of application of that force.

The amount of the constricting force depends upon whether or not the body is completely suspended. Complete suspension is not essential since the partial weight of the body is adequate for the purpose. Persons have succeeded in hanging themselves although their feet were in contact with the floor. Only a slight degree of constriction of the neck is required to cause eventual death. When, however, the entire body is suspended, greater weight is thrown upon the ligature and a greater constricting force results. When such a degree of force is applied to the neck, death supervenes more rapidly than in the case of partial suspension with a diminished degree of constrictive force. When the ligature is not R/CR.MA/4178/2018 JUDGMENT tight, death may ensure slowly, chiefly from the effects of coma induced by disturbance of the cerebral circulation as the result of pressure on the vessels in the neck. The point of application of the force is an important factor not only in the time occupied in dying, but in the subsequent postmortem appearances.

26.4 What is strangulation?

Strangulation may be defined as that form of death which is caused by a constricting force applied around the neck by means of a ligature without suspension of the body. Throttling, or manual strangulation, is that form of death which is caused by compression of the throat, the constricting force being the fingers and the hand or hands of the assailant. Ordinary strangulation may be caused accidentally, suicidally, or homicidally. The constricting mark is usually found at a lower level on the neck than in hanging, but may be found at any level, and frequently direct pressure is exerted upon the larynx. The mark more or less completely encircles the neck transversely. In some cases it may be continuous, but in others it may be invisible at some part of the neck. The nature of the ligature employed plays a prominent part in this respect. The degree and character of injury to the deeper tissues of the neck are dependent on the amount of violence used in the application of the ligature. The underlying muscles frequently show some degree of extravasation, due to rupture of the capillary vessels. The laryngeal cartilages and trachea are usually intact, but in some cases, especially homicidal cases, fractures of these structures are present. Fracture of the hyoid bone is unusual. The injuries in homicidal strangulation are usually more extensive than in accidental or suicidal cases, due to the fact that an assailant frequently uses more force than is necessary to cause the death of his victim. It is in such cases that extensive deep-seated injury is likely to be found. When a ligature is suddenly placed around the neck of a person and pulled tightly, the assaulted person is rendered unconscious very quickly and is unable to offer much resistance. [See Medical Jurisprudence & Toxicology by Glaister XI Edition]"

28. Before we proceed further, it would be relevant to quote below the expert opinion on suicidal death and R/CR.MA/4178/2018 JUDGMENT homicidal death:-

28.1 Noted author Dr. C. K. Parikh in "Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology" Sixth Edition in this respect offered expert opinion as under:

"Suicide, homicide, or accident : Suicidal strangulation is not common although instances have been known. To effect suicide by ligature requires the employment of some means (e.g., a tourniquet) whereby the ligature is kept tight independently of any muscular effort on the part of the suicide. In suicide, the ligature should be found in situ and the body should be free from other signs of violence or marks of struggle. The knot is usually in front.

Homicidal strangulation is a common form of murder. In fact, strangulating should be assumed to be homicidal until the contrary is proven to be more likely under the circumstances. A suspicion of homicide should arise when (a) knot is tied on the back of neck, (b) mouth is gagged, (c) limbs are tied, (d) other injuries are found on the body, (e) signs of struggle are present, and (f) in case of female, if she is sexually assaulted; and in such a case, material that is readily available at hand, e.g., a nylon stocking, pantyhose, or the scarf of the victim, is used as a ligature. Tearing of clothes may be seen."

28.2 Likewise H.W.V.Cox in his book "Medical Jurisprudence and Toxicology" offered expert opinion as under :

"(d) Strangulation - Strangulation by a ligature is quite possible in a suicidal manner, the suicider being able to wrap several turns of rope or wire around his neck and tie a complicated knot before unconsciousness occurs.

Sometimes a "Spanish windlass" device is used in which a loose ligature is tightened up by inserting a stick under the ligature and twisting until it becomes tight. This is quite possible in suicide but of course could also be a homicide. Manual strangulation is virtually impossible as a suicide act, though one or two cases have been described. The mechanism must of necessity be the sudden cardiac arrest type of death due to pressure on R/CR.MA/4178/2018 JUDGMENT the carotid arteries, as it is obviously impossible to maintain pressure long enough to cause florid asphyxial changes with petechial cerebral anoxia would cause the hands to fall limply from the neck, with the return of consciousness to the intended suicide."

28.3 Dr. Modi in "Medical Jurisprudence and Toxicology"

Twenty-third edition offered expert opinion in this regard as under :

"(ii) Whether the Strangulation was Suicidal, Homicidal or Accidental. Suicidal strangulation is not very common, though sometimes cases are met with. In these cases, some contrivance is always made to keep the ligature tight after insensibility supervenes. This is done by twisting a cord several times round the neck and then

tying a knot, which is usually single and in front or at the side or back of the neck, by twisting a cord tightly by means of a stick, stone or some other solid material, or by tightening the ends of a cord by tying them to the hands or feet or to a peg in a wall or to the leg of bed. In such cases, injuries to the deep structures of the neck and marks of violence on other parts of the body are, as a rule, absent. It is not possible for anyone to continue a firm grasp of the throat after unconsciousness supervenes, hence throttling by the fingers cannot possibly be suicidal. Binnar records the case of a woman, aged 40 years, who committed suicide by throttling. She was suffering from melancholia and was found dead, crouched in her bed with both hands compressing her throat; the elbows were supported on the knees, and the back leaned against the wall; there were marks of her fingernails on both sides of the throat."

28.4 Taylor's Principles and Practice of Medical Jurisprudence, Thirteenth Edition, 1984 by Keith Mant, Vol. 1 stated at p. 282 that:

"asphyxia being a condition in which there is an inadequate supply of oxygen to the tissues. It may be defined as a state in which the body lacks oxygen because of some mechanical interference with the process of breathing. At p. 283 it was further stated that cyanosis indicates the blue colour of the skin, mucous membranes and of internal organs, notably spleen, liver and kidneys. The capillary dilation that accompanies a R/CR.MA/4178/2018 JUDGMENT reduction in oxygen tension promotes stasis and therefore a vicious cycle of suboxygenation of the blood commences. The return of blood to the heart is diminished. The resultant impaired oxygenation leads to further capillary dilation, further stasis, with deepening cyanosis Probably results from a combination of stasis and hypoxia. Fluid exudes into the tissue spaces.

At p. 286 it was also stated of the distinction between suffocation and strangulation that conditions associated with mechanical asphyxia include suffocation where the interference with the process of breathing is at the level of the nose or mouth; strangulation where there is compression of the neck, either by (a) the human hand (manual strangulation or throttling); (b) a ligature. In paragraph 6 he stated that in each of these categories the obstructive process at the various level will result in the development of the symptoms and the signs associated with asphyxia previously described. At p. 287 of general features of asphyxia, it was stated that the head and face may show intense congestion and cyanosis with numerous petechiae. Blood exudes from the mouth and nose. Blood tinged frothy fluid is present in air passages. Mucus may be found at the back of the mouth and throat. The lungs which are of particular interest, usually show in addition to congestion of inter- alveolar capillaries, the presence of the oedema fluid in the alveoli, areas of haemorrhage and collapse with intervening emphysema.....

Regarding post-mortem appearances in strangulation at p. 305 it was stated that a careful search in suitable mortuary conditions will usually reveal either external or

internal evidence of the area where the construction has occurred. At p. 306 the General Internal appearances, it is stated that internally the air passages contain fine froth, often blood stained. The lungs are congested with subpleural petechiae. Microscopically there is usually intense inter-alveolar congestion with haemorrhages of varying size, fluid in the alveoli, areas of collapse and intervening areas of ruptured alveoli. The air passages often contain large areas of desquamated respiratory type epithelium, red blood cells and fluid. The remaining organs show only congestive changes.

These conditions vary because of the circumstances that R/CR.MA/4178/2018 JUDGMENT the assailants usually employ considerably more force than would appear to be necessary to ensure that death takes place. In general terms the mark of the neck is usually of the same width as the constricting object and the depth is about half its diameter. Regarding finger-nail marks it was stated that in manual strangulation the marks of bruising will be on the front or sides of the neck, chiefly about the larynx and about it. Marks of pressure of fingers may, however be slight. The distribution of these marks when present will vary with the circumstances, and factors which will affect it include the relative position of the assailant and victim, the manner of gripping the neck, being greater if the grip is shifted or has been reapplied if the victim struggles, and the degree of pressure. The solid tissues of the neck are of extreme importance in cases of suspected strangulation. The solid structures comprise the hyoid bone and the cartilages forming the larynx. If the body is found to have died with marks on the neck which indicate manual strangulation and this is subsequently confirmed in the mortuary and laboratory the case must be regarded as a killing by another person. It is inconceivable that anyone could die from compression of the neck by his own hand because loss of consciousness would cause relaxation of the constricting fingers.

28.5 In Gradwohl's Legal Medicine, Second Edition in Chapter 18 under the caption interpretation of Post- Mortem Appearances in Death from Respiratory Obstruction and Compression of the Neck, at p. 336 it was stated that:

"Systemic and pulmonary congestion and dilatation of the heart are classically described as signs of an asphyxial death. At p. 337 regarding hyoid bone it was stated that two mechanisms have been suggested in which the hyoid bone may be fractured: from direct lateral compression and from indirect violence. Direct lateral compression is one mechanism in manual strangulation, when pressure is applied under the angles of the jaw."

28.6 Medical jurisprudence by Raju and Jhala in Chapter XXV death from asphyxia and death from drowning at p. 226 stated that:

R/CR.MA/4178/2018 JUDGMENT "the heart in asphyxia, specifically right chambers, is always found full of dark venous blood. This is important to note as usually with death, blood disappears

from the heart. The venous system of circulation, because of back pressure, is always found distended with blood. The blood in heart and veins is not only dark blue but also liquid and remains liquid..... The internal organs and mucous membrane also present the general signs of congestion..... This congestion has to be looked for and has to be found in all cases of genuine asphyxia."

28.7 In Medical jurisprudence and Toxicology, 13th Edn. by Modi at p. 155 it was stated that:

"in the case of constriction occurring at the end of expiration the lungs are congested, oedematous and exude bloody serum on being cut, but are pale if constriction occurred at the end of inspiration.... The right side of the heart, the pulmonary artery and venae cavae are full of dark fluid blood, and the left side is empty. The abdominal organs are usually congested. The brain is usually normal, it may be pale or congested according to the mode of death. For symptoms at p. 158 it was pointed out that if the wind pipe is compressed so suddenly as to occlude the passage of air altogether, the individual is rendered powerless to call for assistance, becomes insensible and dies instantly. If the windpipe is not completely closed, the face becomes cyanosed, bleeding occurs from the mouth, nostrils and ears, the hands are clenched and convulsions precede death. As in hanging, insensibility is very rapid, and death is quite painless. Regarding appearances on the neck he stated at p. 159 that if the fingers are used (throttling) marks of pressure by the thumb and fingers are usually found on either side of the windpipe..... At p. 161, appearances due to asphyxia it was stated that the face is swollen and cyanosed, and marked with petechiae. The eyes are prominent and open. In some cases they may be closed. The conjunctive are congested, and the pupils are dilated. The lips are blue. Bloody foam escapes from the mouth and nostrils, and sometimes pure blood issues from the mouth, nose and ears, especially if great violence has been used. Regarding internal appearances he stated that the cornua of the hyoid bone may be fractured, also the cornua of thyroid cartilage but fracture of the cervical vertebrae is extremely rare. The R/CR.MA/4178/2018 JUDGMENT liver may show cloudy swelling and necrosis of the cells, if death has been delayed. The kidneys may show signs of nephritis, and on section the straight tubules may be filled with debris of the blood corpuscles giving the appearances of reddishbrown markings."

28.8 In H.W.V. Cocks Medical Jurisprudence and Toxicology by Dr. Bernard Knight, 5th Edn. in Chapter 1 at p. 207 it was stated that:

"strangulation is again a term which is not exact in itself, as there are several types of strangulation, mainly manual strangulation and strangulation by a ligature. Though both these are similar, there are certain differences which are reflected in the pathological findings. Strangulation is not by any means the same thing as asphyxia; in fact, a better name would be 'pressure on the neck', which is used as an alternative description by some pathologists. Regarding manual strangulation and the length of the time required to cause death at p. 213 it is stated that the length of time for which

pressure on the neck must be maintained to cause death is very variable, from zero seconds to several minutes. The statement regarding length of time he stated that no dogmatic statement of time of two minutes or three minutes can be made. It is of little practical value as unless a witness is present, there is never any way of determining such times. If, however, there is physical evidence of pressure on the neck from bruises and haemorrhage, but no congestion whatsoever, then it is certain that death was relatively rapid before these classical signs appeared, due to reflex cardiac arrest. Where death is due to cerebral anoxia from compression of carotid vessels, then there is usually cyanosis and congestion due to simultaneous blockage of the jugular venous system, though ignorance of time factors make this statement of little practical value. In Taylor's Medical jurisprudence it was stated at p. 282 that the amount of pulmonary oedema can be used to estimate the time interval between injury and death. In practice it is seldom of value as it is common experience that the changes described can develop with great rapidity when a patient dies after choking. At p. 285, asphyxia by violence, it is stated that if the breathing is interfered with for a sufficient period of time unconsciousness and death will supervene."

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21. Let me now straightway go to the postmortem report. In column No.17, the following injuries or features were noted;

17. Injury and wound on "(1) 11cm X 0.5 cm transverse the external portion of reddish blue contusion extending from right lateral part of neck the body, its type, upto posterior part of neck on position, right side with small abrasion measurement, and measuring 0.2 cm 1 to 2 in number around contusion direction shall be anteriorly on neck.

mentioned

specifically, also it (2) 9 cm. X 0.5 cm transverse
reddish blue contusion extending
shall be mentioned from left side of neck towards
that, the injury and left ear lobule.
wound shall be of
(3) Light bluish diffuse

whattimeandreasons contusion on anterior part of thereof.: neck present."

If any part of the body is found to be decayed or than state with what was the position of the flesh underneath the skin (NOTE: In case where there are several injuries and it is not possible to mentioned the same on the space provided for the same than the same shall be mentioned on separate sheet and signature shall be placed in that papersheet)
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22. In column Nos.19, 20 and 21, so far as the internal examination is concerned, the following was noted in the postmortem note;

3. Internal Investigation.

19. Head :-

- (1) Injuries beneath skin and their types: -----
- (2) Upper & lower portion of skull, fracture, portion of body -----
- where fracture has occurred, position etc shall be mentioned.
- 3) Brain: Its internal appearance, size, weight and the Brain and Meninges Congested with petechial

normal condition of the said hemorrhages.

organ and on investigation if any abnormality is found out that it shall be noted carefully. (weight of brain of a male : 3 pound and that of weight of a brain of female : 2.75 pound)

20. Chest Formation:-

- (a) wall, ribs, soft tissues, Congested with petechial bones: hemorrhages.
- (b) Lung partition (Pleura) : Congested.
- (c) Voice box, air pipe form: subcutaneous tissue under ligature mark contused, torn at few places.
- (d) Right lung: Trachea:-Congested with fracture of tracheal cartilage with petechial hemorrhages. Larynx congested with petechial hemorrhages.
- (e) Left Lung : Congested with subpleural

(f)Heart cover (pericardium):	hemorrhages present Congested
(g)Heart (along with its weight):	Congested
(h) Big blood veins:	Congested
(I) Special Note:	-

21. Stomach:-

Wall :	Congested
Covering (peritoneum) of internal skin of stomach:	Congested

C a v i t y , s t o m a c h , a n u s :	Filled with distende viscera
---	---------------------------------

Cavity,teeth,tongue and voice Mouth Closed pipe : Teeth inside mouth Tongue: inside mouth Food pipe (Oesophagus): Congested Stomach & t h i n g s f o u n d i n s i d e Congested-Whole stomach from it : with its contents sent for FSL (some whitish liquid present at cut section Small intestine & t h i n g s f o u n d Congested-Pieces of small out from it: and large intestine send for FSL Large intestine & things found out from it.:

Liver-weight and Pancreas :	Congested
Stomach and Suprarenals :	Congested
Spleen (with weight) :	Congested
Kidneys (along with weight):	
Urine Bag (bladders) :	Congested
Genital organs :	Uterus-bulky-whole uterus with its appendages sent for histopathology reporting.
Position of the particles found out from the stomach at the	Viscera taken

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time of death and if possible
 opinion of medical office
 relating to last food of the
 deceased along with special
 note.

Which internal parts have been (1) Box contains-(A) whole kept for chemical examination stomach with contents and part of small and large and state numbers of bottles intestine.

and serial number wherein the (B) some part of lung, same are kept. : liver, spleen, kidney, brain (2) Box Contains-(c) pieces of liver, spleen, brain, kidney with uterus and appendages.

(d) whole heart, lung (3) Blood Sample.

23. The final cause of death assigned is as under;

"After histopathology report No.769/17 dated 27.11.2017 and FSL report dated FSL/TPN/89/T/1824 dated 18.12.2017, no poison detected and histopathology normal. So final cause of death is cardiorespiratory arrest due to mechanical asphyxia following strangulation."

24. Ms. Thakkar, the learned APP also made available, for my perusal, few photographs of the deceased clicked by the police at the time of drawing of the inquest Panchnama. I am not an expert in the field of forensic science or medicine, but a bare look at the photographs of the deceased and the position of the ligature mark would indicate, prima facie, that the case is one of suicidal hanging. The ligature mark was present on the front portion of the neck and it had gone to the back portion of the ears on both the sides. There were abrasions on the margins of the ligature mark.

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25. Strangulation is defined as the compression of the neck by a force other than hanging. The weight of the body has nothing to do with strangulation. The ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body. When constriction is produced by the pressure of the finger and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bent elbow or some other solid substance, it is known as mugging (strangle hold). Hanging is a form of death, produced by suspending the body with a ligature around the neck, the constricting force being the weight of the body or a part of the body weight. Hanging can be defined as the ligature compression of the neck by the weight of one's own body due to suspension. In hanging, the ligature mark is usually situated above the thyroid cartilage between the larynx and the chin, and is directed obliquely upward following the line of the mandible (lower jaw) and interrupted at the back or may show an irregular impression of a knot, reaching the mastoid processes behind the ears towards the point of suspension. The mark may be found on or below the

thyroid cartilage, especially in case of partial suspension. It may also be circular if a ligature is first placed at the nape of the neck and then its two ends are brought horizontally forward and crossed, and carried upwards to the point of suspension from behind the angle of the lower jaw on each side. The mark will be circular and oblique if a ligature is passed round the neck more than once. Near the position of the knot, it is like an inverted "V" (see Modi's Medical Jurisprudence and Toxicology 23rd Edition, pp.565, 568, 571 R/CR.MA/4178/2018 JUDGMENT and 583). I must note that the most important difference between the hanging and strangulation by ligature is that in hanging the ligature mark is oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment like, whereas in strangulation by ligature, the ligature mark is usually horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.

26. The theory as put forward by the prosecution that the deceased was first strangled to death and then hanged by the accused persons from a ceiling fan with the aid of a Dupatta just to make a show that the deceased committed suicide, should be outright rejected. This does not even appear to be the case of the Investigating Agency. It is in the course of the submissions of the learned APP as well as the learned counsel appearing for the original first informant that such theory has been put forward. There is a reason why this theory, put forward, is absurd. If this theory has to be accepted, then there should have been two ligature marks on the neck of the deceased. The photographs which are attached with the original papers of the investigation, completely rules out this theory because there is only one ligature mark in the shape "V". There is no reference of two ligature marks on the neck even in the postmortem report. Besides the same, the ligature mark which can be seen from the photographs is not one completely encircling the neck and most importantly, the ligature mark would be at a lower level if the case is one of homicidal death. The ligature is almost over the sub-mandibular region which is below the chin. This is very R/CR.MA/4178/2018 JUDGMENT apparent on bare look at the photographs. There are no signs of any scuffle worth the name. This also rules out the theory of homicidal death. Once again, at the cost of repetition, I state that the ligature mark is "V" shaped incomplete-oblique.

27. There is one another pertinent feature which needs to be noted from the photographs of the deceased. One eye is open and the another is closed. This is called Le Facie Sympathique. This suggests hanging. Cyanosis is also not so evident. This also points towards hanging. The postmortem report is absolutely silent so far as Emphysematous bullae on the surface of the lungs is concerned. The Emphysematous bullae on the surface of the lungs was not found to be present. This is suggestive of suicide by hanging.

28. In any view of the matter, there is a considerable doubt as regards the fact whether the case is of homicidal strangulation or suicidal strangulation. Strangulation, by itself, does not mean that the case is one of homicidal death. In the medical jurisprudence, there is something called suicidal strangulation. It is, altogether, different to say that the strangulation should be assumed to be homicidal until the contrary is proven to be more likely under the circumstances. Strangulation by a ligature is possible in a suicidal manner.

29. I am inclined to give more weightage to the theory of suicide not only keeping in mind the postmortem report and the photographs but also considering the two statements of the neighbours referred to above. The statement of Manibhai Madhavlal Maheriya and his son Ravikumar Manibhai Maheriya further reinforces the fact that the deceased committed R/CR.MA/4178/2018 JUDGMENT suicide by hanging. Both these witnesses, in clear terms, have stated in their statements that on hearing the shouts, they reached at the house of the deceased and noticed that the deceased had hanged herself with the aid of a Dupatta from a ceiling fan. These two witnesses have stated that the other persons residing in the neighbourhood came at the house of the deceased and cut the Dupatta with a scissor and brought the dead body of the deceased down.

30. The learned APP as well as the learned counsel appearing for the first informant vehemently submitted that at the stage of bail, the court should not give any benefit of doubt to the accused even if such doubt arises having regard to the materials on record. To put it in other words, the submission on behalf of the State as well as the first informant is that this Court should blindfoldedly accept the postmortem report at this stage as a gospel truth and believe the case to be one of homicidal death by strangulation. I do not find any merit in such a submission. First, the postmortem report itself is not clear and does not indicate only towards the theory of homicidal death by strangulation. Ultimately, in the course of the trial, the prosecution will be examining the expert witnesses in this regard and the Trial Court will get the benefit of the opinion of the expert witnesses. However, that does not mean that at the stage of bail, the accused is not entitled to the benefit of a strong reasonable doubt with regard to the nature of the death. The stage when the accused is asking for a bail is also a stage where the principal of presumption of innocence operates and if there is a reasonable doubt in the mind of the judge having regard to the materials on record, then the benefit of such doubt should go to the accused even R/CR.MA/4178/2018 JUDGMENT at the stage of bail. There is no reason for me, at this stage, to disbelieve the two statements of the independent witnesses, referred to above. It is not even the case of the prosecution that the two witnesses are partisan or were won over by the accused persons in any manner.

31. In view of the above, I am inclined to exercise my discretion in favour of the applicants.

32. In the result, the present application is allowed by directing that in the event of arrest of the applicants herein in connection with the FIR registered at the Nadiad West Police Station vide I-CR No.48 of 2017, the applicants shall be released on bail on each of them furnishing a personal bond of Rs.50,000/- (Rupees Fifty thousand only) with one surety each of the like amount on the following conditions that they shall:

(a) remain present at the concerned Police Station on 21st March, 2018 between 11.00 a.m. and 2.00 p.m.;

(b) not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/them from disclosing such facts to the court or to any police officer;

(c) at the time of execution of bond, furnish the address to the Investigating Officer and the Court concerned and shall not change their residence till the final disposal of the case till further orders;

(d) not leave India without the permission of the Court, and if having passport, shall deposit the same before the trial Court within a week;

33. It goes without saying that any observations touching the merits of the case are purely for the purpose of deciding the R/CR.MA/4178/2018 JUDGMENT question of grant of bail and shall not be construed as an expression of the final opinion in the main matter.

34. It is brought to my notice that the case is yet to be committed to the Court of Sessions. The court concerned is directed to take steps at the earliest to commit the case to the Court of Sessions. Once the case is committed to the Court of Sessions, then the Sessions Court shall proceed to frame the charge at the earliest and start with the recording of the evidence on day to day basis. The Registry is directed to forward a copy of this judgement to the Court, in which, the committal proceedings are pending so that necessary steps can be taken in accordance with law. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(J.B.PARDIWALA, J) Vahid