

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

CRIMINAL APPLICATION NO.1022 OF 2016

Punya s/o Tarkya Wasave,
Age 22 years, Occu. Education,
R/o Lakkadkot, Taluka Taloda,
District Nandurbar

..Applicant

Versus

The State of Maharashtra
Through Police Station, Taloda,
District Nandurbar

..Respondent

Mr V.P. Latange, Advocate for applicant
Mr S.P. Sonpawale, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 3rd March 2016

PER COURT

Heard.

2. The complainant, Raising, on 1st September 2015 has lodged complaint along with Police Patil, one Lalsing, Devising and Baba Padvi alleging that his minor son Ravi who was aged about 1½ years has died of drowning in the canal/small lake adjacent to his house. It is claimed by him that before lodging the complaint, the death of Ravi was informed to him by his real sister Parvatibai.

3. The above referred intimation was given on 1st September 2015. Thereafter, on 23rd September 2015, Raising, the father of deceased Ravi lodged report that applicant is responsible for the death of Ravi, as Ravi was removed from the custody of Raising's mother namely Shivlibai. As a consequence, the offence in question vide Crime No.67

of 2015 punishable under Section 302, 364, 452 read with Sec.34 of Indian Penal Code came to be registered. Investigation in the matter is complete and the charge-sheet is already filed.

4. While trying to make out the case for grant of bail, learned Counsel for the applicant would urge that the applicant is falsely implicated in the crime by relying upon the hearsay evidence. Initially, he has taken me through the intimation about death given by Raising on 1st September 2015 claiming that his mother Shivlibai was also accompanied him. On 23rd September 2015, he narrated that his mother Shivlibai has informed him that it is the applicant, who is responsible for the death of Ravi, as the applicant has removed Ravi from the custody of Shivalibai.

5. In the above background, learned Counsel for the applicant Mr Latange would urge that the applicant is falsely implicated in the crime in question. According to him, Shivalibai, who claims to be an eye witness to the incident has come out with the story of involvement of applicant in commission of crime in question is after thought, as the first A.D. was reported on 1st September 2015 though the complainant Raising has claimed that his mother Shivlibai was accompanied him, the fact of applicant's act of removal of custody of Ravi from the applicant was not narrated. He would submit that since the investigation is complete and charge-sheet in the matter is already filed and in absence of criminal antecedents, the detention of applicant is not necessary.

6. Learned A.P.P. opposed the application on the ground that there is strong prima facie case against the applicant and the crime in question has been committed by the applicant in the backdrop of differences between the complainant and applicant. He would submit that Shivlibai, an eye witness and other three witnesses, in clear terms pinpoint the involvement of applicant in crime and as such, prayed for rejection of application.

7. With the assistance, I have perused the F.I.R., which was lodged in the matter of death of minor son Ravi of the complainant Raising on 23rd September 2015. It is required to be noted that on 1st September 2015, the dead body of Ravi was discovered from the spot. It is also required to be noted that the A.D. was registered on 1st September 2015. Immediately after noticing the body of deceased Ravi, the presence of Shivlibai, mother of the complainant Raising was very much mentioned. As such, Shivalibai was aware about the conduct of the applicant and his involvement in crime in question from the day one i.e. 1st September 2015, however, it is only on 23rd September 2015, without giving any explanation, the F.I.R. implicating the present applicant came to be lodged.

8. The statements of other witnesses, which are sought to be relied, namely Singa Olya Padvi, Suresh Singa Padvi and Parvatibai Kandya Padvi though speak of involvement of the applicant in commission of crime, however, same is based on the hearsay

evidence, i.e. the information received by them from Shivlibai on the date of incident.

9. In my opinion, on the backdrop, in which the applicant has committed the crime in question and which was formed to be basis for committing heinous crime of murdering the minor child of 1½ years is required to be dealt with proper care and caution. Having read the statements of so claimed eye witnesses, it is inferred that those are placed on hearsay evidence and not in the capacity of eye witnesses. The only eye witness to the incident is Shivlibai, who though accompanied the complainant on 1st September 2015, has not narrated the involvement of the applicant in commission of crime in question.

10. In my opinion, there is serious doubt raised as regards prima facie involvement of the applicant in commission of crime in question. In this background, it will be appropriate to order release of the applicant.

11. As such, Criminal Application stands allowed. The applicant be released on bail in Crime No. 67 of 2015, registered at Taloda Police Station, District Nandurbar, for the offences punishable under Sections 302, 364, 452 read with Sec.34 of Indian Penal Code, upon furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

(N.W. SAMBRE, J.)