

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

Criminal Application No. 4022 of 2016

District : Nanded

Kavita wd/o. Uttam Chavan,
Age : 40 years,
Occupation : Household &
Agriculture,
R/o. Bolka, Taluka : Kandhar,
District : Nanded. .. Applicant.

versus

The State of Maharashtra,
Through Police Station, Kandhar,
Taluka : Kandhar,
District : Nanded. .. Respondent.

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Mr. S.S. Panale, Advocate, for the applicant.

*Mr. S.M. Ganachari, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 20TH AUGUST 2016

ORAL ORDER:

The applicant / accused in Crime No. 142/2015, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, registered with Police Station, Kandhar, District Nanded, by this application is seeking her release on

bail after filing of the charge-sheet.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that the applicant is a woman and she is second wife of deceased Uttam Chavan. The learned Counsel argued that death of Uttam Chavan is not shown to have been a homicidal death. The learned Counsel further argued that statement of Nagesh Chavan, who is son of the deceased and the present applicant, goes to show that deceased Uttam was very much alive between 11.11.2015 and 12.11.2015. As such, statement of alleged eye witness Shankar Chavan becomes redundant. The learned Counsel further argued that statement of witness Babu Kadam is also of no use to infer complicity of the applicant in the crime in question. The learned Counsel further argued that statement of Rupesh, who is occupant of the house where the incident, in question, happened, is deliberately not recorded by the investigator.

3. The learned Addl. Public Prosecutor opposed the application by contending that the deceased was in custody of the present applicant as well as absconding accused Rajendra Pawar, with whom the present applicant was having illicit relations. The learned Addl. Public Prosecutor argued that the applicant was having motive to eliminate the deceased and version of eye witnesses cannot be testified at

this stage.

4. Perused the charge-sheet. According to the prosecution case, co-accused Rajendra Pawar was having illicit relations with present applicant Kavita Chavan, who is second wife of deceased Uttam Chavan. Therefore, according to the prosecution case, they both have committed murder of deceased Uttam Chavan.

5. Perusal of statement of Nagesh Chavan, who is young boy of 17 years of age, goes to show that the house where the incident, in question, happened, at the relevant time, was occupied by his mother i.e. present applicant Kavita Chavan, her father i.e. deceased Uttam Chavan, his younger brother Rupesh Chavan, as well as his maternal uncle Rajendra Pawar.

6. Report of post mortem examination of deceased Uttam Chavan goes to show that his dead body was having five superficial injuries like abrasion and contusions. Neck of the dead body was having one deep injury. It is seen from the post mortem report, that hyoid bone, thyroid and cricoid cartilage were sent for histo-pathological examination in order to ascertain nature of deep injury on the neck of the deceased. The cause of death was given on 19.02.2016 after receipt of report of histo-pathological examination of the viscera. This report indicates

that Uttam Chavan died due to pulmonary oedema. It is also certified that injury 'B' in column no.17 i.e. deep injury to the neck was post mortem in nature. Suffice to conclude that Uttam Chavan did not die because of deep injury to his neck.

7. The learned Counsel for the applicant drew my attention to the medical jurisprudence and contended that pulmonary oedema is often caused by congestive heart failure. The learned Counsel for the applicant, therefore, argued that in every probability, Uttam died because of heart failure and, therefore, it cannot be said that his death is homicidal. It will be better to leave this point for adjudication at the time of trial.

8. Dead body of Uttam Chavan was found on 12.11.2015 in the afternoon at his house by his son Nagesh. His statement reveals that he thereafter called his aunt Rukminbai and neighbours. At that time, present applicant was not at the house.

9. Statement of Nagesh Chavan, who is occupant of the house where the incident had happened, do show that in the night intervening 11.11.2015 and 12.11.2015, his father was very much alive as he was sleeping in the shed of front yard of his house. When this witness woke up in the morning, he did not find his father Uttam present in the front yard. His

statement further reveals that when he left the house at about 09.30 p.m., his mother i.e. present applicant had informed him that his father is sleeping inside the house. Thereafter also, this witness Nagesh Chavan, his brother Rupesh Chavan and cousin Laxman Chavan had lunch in the house. They did not find anything suspicious at the house.

10. On this backdrop, the statement of Babu Kadam, that in the night intervening 11.11.2015 and 12.11.2015, he heard shouts of Uttam Chavan, will have to be considered. Similarly, on the backdrop of statement of Nagesh Chavan, statement of Shankar Chavan will have to be examined. Said Shankar Chavan, after about one and half month to the incident, had reported to the investigator that in the night intervening 11.11.2015 and 12.11.2015 at about midnight, he noticed the present applicant and absconding accused Rajendra Pawar assaulting Uttam Chavan by means of a wooden log at veranda of the house. This witness has given explanation for his not reporting the matter to the Police by stating that the applicant and co-accused Rajendra Pawar are persons of cruel nature. What is the material to come to this conclusion is not finding place in his statement. On the backdrop of this statement, version of Nagesh Chavan reveals that he returned to his house at 00.30 a.m. of 12.11.2015 and found his father Uttam Chavan sleeping in veranda of the house.

11. With this material from the charge-sheet, prima facie it is seen that there are two versions of the incident, in question, and one of the same is favouring the present applicant. That apart, present applicant is a woman and trial against her will take its own time.

12. Considering the matter in its entirety and particularly the nature of evidence against the present applicant, her pre-trial detention is not warranted and, therefore, the following order :-

(a) The Application is allowed.

(b) The applicant / accused, in the above crime, be released on bail on her executing P.R. Bond in the sum of Rs. 15,000/- and one or more solvent sureties of the like amount.

(c) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(d) The applicant shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious

disposal of the trial.

(e) The applicant shall not repeat commission of similar type of offences in future.

13. The Application stands disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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