

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 18 OF 2016

SMT.SNEHAL GAONKAR, PRESENTLY IN
JUDICIAL CUSTODY SUB JAIL, SADA.

... Applicant

Versus

STATE OF GOA, THROUGH PUBLIC
PROSECUTOR, PANAJI AND ANR.,

... Respondents

Mr. S. Dessai, Senior Advocate with Mr. A.V. Pavithran, Advocate
for the Applicant.

Mr. S.R. Rivankar, Public Prosecutor for the Respondents.

Coram:- S. B. SHUKRE, J.

Date:- 2nd February, 2016

ORAL ORDER:

Heard learned Senior Counsel for the applicant and
learned Public Prosecutor for the State.

2. The applicant has been charged with offences punishable under Sections 363, 120-B, 342, 328 and 302 read with Section 120-B of I.P.C. and also Section 8 of the Goa Children's Act, 2003.

3. Trial of the applicant is going on and it is almost half way through when this application has been moved by the applicant.

4. Learned Senior Counsel for the applicant contends that the applicant is in jail for a period of almost six years and her trial is still to be concluded. He submits that in case the applicant is found to be innocent or she is awarded less punishment, a question would arise as to who would compensate the applicant for her unjustified detention for such a period of time. Learned Senior Counsel has taken me through the relevant facts as they emerge from the statement of the deceased, complaint filed by the father of the deceased, supplementary statement of the father of the deceased and other relevant papers.

5. Learned Public Prosecutor submits that the evidence of the doctor, who has given his opinion about the cause of death, is yet to be recorded and it is likely to be recorded in a weeks' time or so. He submits that this application should not be considered atleast till the time the evidence of the doctor is over. He submits that there is sufficient evidence to find out the

guilt of the applicant under Section 302 of I.P.C. He submits that the previous bail application has been rejected by the trial Court and since her trial is going on, which is likely to be concluded in a short time, it would not be appropriate to grant such application at this stage. He submits that this Court may issue appropriate direction to the trial Court for expeditious hearing of the matter and the prosecution shall do everything to abide by the direction of this Court.

6. The trial of the applicant is going on and it is almost half completed. At such a stage, this Court has been called upon to consider the necessity of releasing the applicant on bail. But, the stage of the case against the applicant being what it is, it may not be proper for this Court to make any such observations as would affect the merits of the case while deciding this application. So, I would refrain from making such observations and confine myself to just to the necessity of grant of the plea of the applicant for securing her bail or otherwise at this stage of the trial.

7. There are certain facts which I must point out here, as in my opinion, they have a bearing on the questions involved

in the application. There is a statement of the deceased dated 16.07.2010, which has been recorded on the very date when she was rescued from the clutches of the applicant. In this statement, the deceased girl has stated before the police that for whatever period of few hours she was in the custody of this applicant, she was not given any food by the applicant. In the complaint, that was filed on the very date by the father of the deceased also, no fact regarding any food or drink given by the applicant has been stated. However, the fact of offering a soft drink of yellow colour in a glass by the applicant to the deceased girl for the first time is stated in the supplementary statement dated 23.07.2010 given by the father of the deceased. It appears that the deceased girl was in the alleged custody of the applicant only for few hours of 16.07.2010 and she was in the custody of her parents for a longer period of time i.e. from night of 16.07.2010 till her death, which occurred on 24.07.2010.

8. In this background, the opinion of the doctor, whose evidence is yet to be recorded would have to be appropriately considered and I am sure that the same will be considered appropriately by the trial Court. This opinion, at its best, only suggests that according to the doctor the cause of death of the

girl was due to poison. It does not say anything about the chemical name of the poison, category or class of the poison which was alleged to be administered to the deceased girl and who did it. The report of the Forensic Science Laboratory, Tamil Nadu does not help the prosecution in any manner as it shows that the result of the analysis of the viscera was negative for presence of any poison or drug.

9. With such facts emerging from the record, the applicant has remained incarcerated for a period of almost six years. The applicant is also a woman. Therefore having regard to the facts discussed earlier and also the period of time taken for conclusion of the trial and having regard to the fact that the applicant has a daughter of six years who seems to be unfortunate since her birth to be denied the affection of her mother, I am of the opinion that now time is ripe to favourably consider the plea of the applicant. Accordingly, I find that this application deserves to be allowed conditionally.

10. The application is allowed on the following conditions:-

- (a) The applicant is directed to furnish P.R. bond of Rs.25,000/- alongwith one surety in the like sum.
- (b) The applicant shall attend the Court on all dates that are fixed for trial or that would be fixed in future.
- (c) The applicant shall not meet any of the witnesses and shall not tamper or attempt to tamper with the prosecution witnesses.
- (d) The applicant shall co-operate with the trial Court for expeditious disposal of the case.
- (e) Bail before the trial Court.

S. B. SHUKRE, J.

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