

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 647 OF 2016

Riba Babu SelvamApplicant

V/s.

The State of MaharashtraRespondent

Mr. K. D. Pandey i/b Mr. Dinesh Pandey Advocate for Applicant.
Smt. Rutuja Ambekar APP for the State.

CORAM : A. S. GADKARI, J.
DATED : 24th OCTOBER, 2016.

PC :

1) This is an application under section 439 of the Code of Criminal Procedure, 1973 for bail in CR No. 393 of 2015 dated 18/07/2015 registered with Sakinaka Police Station, Mumbai under section 302 r/w 34 of the Indian Penal Code.

2) Heard the learned counsel for the applicant, the learned APP and also perused the entire charge-sheet annexed to the application.

3) It is the case of the prosecution that deceased Babu Selvam was the husband of the applicant. That applicant was having illicit relations with co-accused namely Ajay Choudhari. That there used to be quarrels between the deceased and applicant on the said count. That the deceased was a hurdle in

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the love affair of the applicant and co-accused Ajay Choudhari and therefore, in the intervening night of 17/07/2015 and 18/07/2015, applicant and coaccused Ajay Choudhari committed murder of deceased Babu Selvam. F.I.R. is lodged by Yeshuraj Rajratnam, brother of the deceased. During the course of investigation, police received post-mortem notes and the Medical Officer has expressed the opinion as to the cause of probable death as:

“Death due to Asphyxia with ligature around the neck”.

After completion of investigation, police have submitted the charge-sheet.

4) The learned counsel for the applicant submitted that the investigation in the present case is completed and police have already submitted the charge-sheet. That the applicant is a lady and is in jail since 19/07/2015. He further submitted that except the statement of the younger son of the applicant who was aged about 5 years at the relevant time, there is no other evidence on record against the applicant. He submitted that the said younger son of the applicant is a child witness and has not answered the questions put to him by the Investigating Officer properly. He therefore prayed that the applicant may be released on bail.

5) Material available on record discloses that in the intervening night of

17/07/2015 and 18/07/2015, the applicant along with her younger son namely Jeru Franklin was in the house along with deceased Babu Selvam. The said witness i.e. younger son of the applicant has categorically stated that in the said night, coaccused Ajay uncle @ Monu @ Mannu uncle had been to the house of the deceased and the applicant and said coaccused went on the upper floor of the house where the deceased was sleeping. Apart from the said fact, there is a presumption under section 106 of the Evidence Act which is against the applicant, as it was within her special knowledge about the facts and/or events which took place within the four corners of the house in the said intervening night. Even if the statement of the child witness Jeru @ Franklin is kept aside for consideration, the presumption as contemplated under section 106 of the Evidence Act runs against the applicant. Applicant has not offered any probable explanation during the course of investigation to rebut the said presumption. Thus, according to me a strong *prima facie* case against the applicant is made out by the prosecution and therefore, applicant is not entitled to be released on bail.

6) The applicant being a lady and is in jail since 19/07/2015, the learned Additional Sessions Judge, seized of the trial arising out of C.R. No.

293/2015 registered with Sakinaka Police Station, Mumbai, is hereby requested to make an endeavour to expedite the said trial.

Application is rejected in the aforesaid terms.

(A. S. GADKARI, J.)