

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 704 OF 2016

Pooja Deepak Kamble

... Applicant.
(Org. Accused)

V/s.

The State of Maharashtra

... Respondent.

Mr. Kuldeep U. Nikam, Advocate, for the Applicant.

Mr. J. H. Ramugade, A.P.P. for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 06th JUNE, 2016

P.C. :

1 The Applicant/accused in Crime No. 42 of 2016 for the offences punishable under sections 302, 323, 326 read with section 34 of the Indian Penal Code, registered with the Police Station, Sangli (Rural), by this application under section 438 of Criminal Procedure Code is seeking pre-arrest bail.

2 Heard learned counsel appearing for the Applicant. He argued that deceased - Maruti has three sons. Out of them, the informant-Ganesh is resident of Pune. Rest of his two sons reside at village Bisur in Sangli District. All three brothers were on inimical terms because of the dispute over the property. Learned counsel further argued that the incident in question allegedly happened on 27.03.2016. Applicant is the wife of

co-accused-Deepak, who is son of the deceased. Learned counsel for the Applicant by taking me through the contents of FIR argued that though the incident allegedly happened on 27.03.2016, the deceased was not taken to the hospital by his another son. He further argued that the FIR discloses that informant had asked his brother, co-accused-Deepak, to admit their father Maruti (since deceased) to the hospital and accordingly, co-accused Deepak had admitted the deceased - Maruti initially to the Civil Hospital, Sangli and thereafter to Bharti Hospital, Sangli, where he succumbed to death on 2nd April, 2016. Thereby section 302 came to be added to the case diary of the crime in question. Learned counsel for the applicant was at pains to point out that the applicant is falsely implicated in the crime in question because of the property dispute between the brothers. He argued that a report of the incident was initially lodged by Maruti (since deceased) and in that report the name of applicant was not mentioned. The Applicant was falsely implicated being the wife of co-accused-Deepak with whom the informant had a dispute regarding the property. Learned counsel further argued that no case for offence punishable under section 302 is made out because the material collected by the prosecution during investigation does not show any intention on the part of the accused to commit murder of Maruti Subhanna Kamble.

3 As against this, the learned APP argued that there are eye witnesses to the incident in question and the FIR shows that the Applicant had assaulted deceased-Maruti alongwith her husband, the co-accused-Deepak.

4 Perusal of the papers of investigation goes to show that the incident in question had allegedly occurred on 27.03.2016. The informant-Ganesh, son of the deceased Maruti, upon getting knowledge of the incident, came to village Bisur on 29.03.2016. FIR further shows that he met his father and asked him as to what had happened. According to the informant, his deceased father had made a dying declaration to the effect that on 27.03.2016, co-accused-Deepak as well as the present Applicant-Pooja had assaulted him by means of wooden plank and then he was dragged upto Karnal Road by holding his legs.

5 Perusal of FIR goes to show that the co-accused-Deepak, on the basis of instructions of his brother/informant Ganesh, had admitted their father Maruti Subhanna to the hospital. Perusal of the postmortem report shows that except healed abrasions, there was no external injuries on the dead body. The cause of death is shown as “subdural haemorrhage”. Perusal of the papers of investigation shows that soon-after the incident, as reflected in FIR, the deceased Maruti Subhanna had been to the Police Station, Sangli Rural and reported that

Deepak Kamble had assaulted him by means of fists and kicks blows because of the dispute regarding house property. On the basis of the report lodged by Maruti Subhanna (since deceased) on 27.03.2016, non-cognizable case came to be registered as per section 155 of the Code of Criminal Procedure. Statement of Maruti Subhanna Kamble (since deceased) came to be recorded on 29.03.2016 by the concerned police officer in the light of the NC registered. In his statement, Maruti Subhanna (since deceased) has stated to the police that report lodged by him on 27.03.2016 is correct and his son Deepak had abused and assaulted him by means of fist and kick/leg blows on 27.03.2016. It is worthwhile to note that this first version of the prosecution case nowhere reflects name of the present applicant as assailant. Subsequently, in FIR lodged on 01.04.2016 the name of the Applicant is figured and that too as per alleged oral dying declaration by the deceased Maruti Subhanna. No doubt eye witnesses are also attributing role to the applicant in assaulting the deceased Maruti Subhanna but in the wake of the first version of the prosecution case, coming from the mouth of the victim of the crime in question, role of the applicant in crime in question becomes seriously doubtful and that prima facie it appears that she is implicated in the crime in question because of inimical terms of her husband with his brothers over the issue regarding property.

6 The applicant is a lady, having two children to support. Considering the nature of the evidence against her, she is certainly entitled for pre-arrest bail and therefore, the order :-

ORDER

- i. Anticipatory bail application is allowed.
- ii. Ad-interim order dated 18th April, 2016 is confirmed on the same terms and conditions.
- iii. In addition, the Applicant is directed that she shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against her so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that she shall not tamper with the prosecution evidence in any manner.
- iv. The Applicant should attend the investigating officer on every Saturday from 11 a.m. to 12 noon for a period of one month from today and she should continue to attend the investigating officer, if reasonably asked for by him, till filing of the charge-sheet.
- v. The Applicant should co-operate for expeditious disposal of the trial.

(A. M. BADAR, J.)