

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2096 OF 2017

Meena Rajlu Jaiswal	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.Ravi Gurnani i/b Vijay P.Agale for applicant.
Ms. A.A.Takalkar, APP for the State.

CORAM: A.M. BADAR, J.
DATED: 20th NOVEMBER 2017

PC:-

1. The applicant/accused in Crime No.63 of 2017 registered with police station Pawai for the offence punishable under Section 302 of the Indian Penal Code, is seeking her release on bail after filing of the charge-sheet.

2. Heard the learned advocate appearing for the applicant/accused. He argued that the investigation does not shows time of death of 21 days old female child of the present applicant. He further argued that intention of legislature is seen from perusal of Section 437 of the Code of Criminal

Procedure is to release a woman even if, she is accused of a Capital offence provided, she is available for facing the trial and receiving the sentence, if any, ultimately imposed on her.

3. The Learned APP opposed the application by contending that the case in hand is that of custodial death of 21 days old female child by the present applicant, who happens to be the biological mother of the deceased female child. The learned APP drew my attention to the statement of Deepika Kangane to point out that at about 4.00 p.m. of 7.2.2017 the child was very much alive and happy.

4. I have carefully considered the rival submissions and also perused the entire charge-sheet.

5. The crime in question is registered on the basis of report lodged by Vishnu Dorugade, PSI after noting to findings in the autopsy report of 21 days old female child and after conducting preliminary inquiry in the matter. The first

informant reported that on 7.2.2017 from 5.00 p.m. onwards, the deceased female child was in custody of the present applicant.

6. The report of post-mortem examination of dead body of 21 days old female child shows that the death was because of Asphyxia due to smothering with head injury.

7. Statement of Rajlu father of the deceased shows that because of his wedlock with the present applicant, he is having a female child named Amruta, who was born on 14.6.2015. Rajlu further reported that on 15.1.2017, his wife i.e. the present applicant Meena delivered another female child and because of birth of a female child, applicant Meena was not happy. The first informant Rajlu further narrated that after delivery of his wife, he called his mother named Rajpati and sister Silu from his native place for taking care of newly bond child.

8. The incident in question allegedly took place on 7.2.2017. Statement of Rajlu recorded on 9.2.2017 shows that on that day he returned to his house at 8.00 p.m. at that time his wife was in the kitchen and the new born baby was sleeping. Statement of Rajlu shows that after some time, his mother Rajpati and sister Silu returned to the house at 9.30 p.m. When the present applicant took the newly born child for breast feeding, the applicant started weeping and she told that the newly born baby is feeling cold and not moving her limbs. Supplementary statement of Rajlu modulated his version by stating that his mother and sister returned to the house at 9.30 p.m.

9. Statement of Rajpati shows that she was very much in the house on 7.2.2017 and at about 7.00 p.m. she left the house for purchasing milk and vegetables. Rajpati further stated that she returned to the house and at that time the present applicant was applying some ointment to her wounds and the newly born baby was sleeping. Rajpati further stated

that after some time she again left the house for attending the programme in the vicinity and then returned to the house at 9.30 p.m. Thereafter, as per version of Rajpati, when the present applicant took the new born baby for breast feeding, the present applicant started shouting by saying that the child is feeling cold.

10. Perusal of the post-mortem report does not show the timing of death of newly born baby. Statement of witnesses recorded by the investigators do show that the applicant was not in exclusive custody of the minor female child at that time. Witness Rajlu as well as his mother Rajpati were very much present in the house prior to detection of the fact that the newly born female child is dead. The investigation of the crime in question is already over. There is nothing tangible to infer that the applicant would not be available for trial, if she is released on bail. It is also seen that the applicant is a mother of two years old female child named Amruta. In this situation, I am of the considered opinion that the applicant is

entitled for restoration of her liberty during pendency of the trial. As such the following order .

ORDER

- i) The application is allowed.
- ii) The applicant/accused in Crime No in crime No.63 of 2017 registered with police station Pawai for the offence punishable under Section 302 of the Indian Penal Code be released on bail on her executing P.R. Bond in the sum of 15,000/- and on furnishing surety in like amount.
- iii) The applicant should not tamper with the prosecution evidence.
- iv) She should furnish her residential address to the investigator and to inform the changes of address, if any.

(A.M. BADAR, J)