

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 662 OF 2017

(Smt. Swathi Wd/o Nitin Nair..vs..State of Maharashtra, through
PSO.PS.Bajajnagar, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri C.S.Dhore, Advocate for applicant.

Shri R.S.Nayak, A.P.P. for State-non-applicant.

CORAM : V.M. DESHPANDE, J.

DATED : SEPTEMBER 29, 2017

This is an application for grant of regular bail.

2] Heard learned counsel for applicant and
learned A.P.P. for State-non-applicant.

3] The applicant was arrested in connection
with Crime No.78/2017, registered with P.S.Bajajnagar,
Nagpur, for the offence punishable under Section 302 of
the Indian Penal Code on the allegation that she has
committed of her husband Nitin.

4] This Court on 19/7/2017 (Coram: Z.A.Haq, J.)
granted temporary bail to the present applicant and she
was released on bail, with a direction that applicant shall
cooperate with the investigating agency. The learned
A.P.P. submitted that after released from the jail the
present applicant has fully cooperated with the
investigating officer.

5] The applicant's marriage with deceased Nitin
was her second marriage. According to prosecution,

prior to marriage of applicant with Nitin she was in love with one Anil Sukumaran . Anil's statement is available on record in the investigation papers. That shows that though she was in his love, however after her marriage there were no relations what so ever in nature between Anil and present applicant. Further, Anil is resident of Kerala. The incident has occurred at Nagpur. There is no evidence what so ever in nature after marriage of the present applicant at any point of time applicant or Anil visited in the State of Madhya Pradesh or State of Maharashtra. Therefore, the so called motive which the prosecution tried to proposes is on very weak foundation. Another circumstance which pressed into service is presence of the applicant at the time when Nitin was found dead. Applicant's presence in the house is the most natural one since she is wife of Anil. Merely, she was present in the house that cannot be incriminating circumstance against the present applicant.

6] According to submission of learned counsel for the applicant has pointed out that once the prosecution is unable to point out any concrete material on the part of the present applicant to eliminate her husband in my view submission of learned counsel for the applicant that deceased might have committed suicide has to be considered in the light of other available evidence in the prosecution case. At the relevant time, deceased alongwith applicant were

residing as a tenant of Krushnarao Dhatodekar. The supplementary statement of Krushnarao Dhatodekar was recorded on 5/6/2017 after conducting reconstruction panchnama on 5/6/2017 itself. The reconstruction panchnama as well as statement of Krushnarao Dhatodekar on 5/6/2017 show that one blade of fan was having bent. What is important is that in his statement dated 5/6/2017 he states that prior to the incident there was no such bent on the said blade of the fan. In my view this particular reconstruction panchnama which is part and parcel of the investigation papers and statement of Dhatodekar give support to the submissions of learned counsel for the applicant. Here, we are not deciding the trial. Here, at the present case the Court is deciding as to whether the applicant should again sent in jail or not.

7] Applicant is a lady. Further, at no point of time she has misused any liberty granted to her. Further, from the investigation papers in my view it supports the submissions of the learned counsel for applicant. Therefore, in my view applicant need not be sent again in jail. That leads me to pass the following order.

ORDER

- I) Application is allowed.
- II) Applicant Smt.Swathi Wd/o Nitin Nair is entitled to continue her bail which was granted by this Court on 19/7/2017 is

hereby confirmed till the decision of the trial.

III) The order dated 19/7/2017 is hereby confirmed.

IV) While releasing the applicant on temporary bail, this Court has directed that she should not leave Nagpur City and shall stay with K.Unnikrishnan S/o M.Kesavan at B-51,CMPDI Complex, Jaripatka,Nagpur-14. The applicant is directed to submit her residential address to the investigating officer alongwith her cellphone number so that investigating officer can issue intimation to the applicant at the time of presentation of the chargesheet in the Court of law. In that view of the matter, the condition imposed by this Court that applicant shall not leave Nagpur City and shall stay with Shri K.Unnikrishnan is relaxed.

Application is disposed of.

JUDGE