

18- BA 769 of 2018 a/w.
BA -770 of 2018

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

BAIL APPLICATION No. 769 OF 2018

Jainabi Hashmi Irani and Anr.

...Applicants

Vs.

The State of Maharashtra

...Respondent

WITH

BAIL APPLICATION No.770 OF 2018

Maharani Firoz Irani

...Applicant

Vs.

The State of Maharashtra

Mr. Umesh R. Mankpure for Applicants in BA 769 of 2018

Mr. V.M. Thorat for Applicant in BA 770 of 2018

Mr. S.H. Yadav-APP in BA 769 of 2018

Mr. Vinod Chate -APP in BA 770 of 2018

Mr. Anil M. Kharamate, ASI, Sanjay Nagar Police Station Sangli

CORAM : SMT. SADHANA S. JADHAV, J.

DATE: JUNE 11, 2018

P.C.

1. Heard. These are the applications filed under Section 439 of the Criminal Procedure Code. The Applicants herein are arrested on 21st October, 2017 in Crime No. 133 of 2017 registered at Sanjaynagar Police Station. The

investigation is completed and the charge-sheet is filed against the present Applicants for the offences punishable under section 302, 143, 147, 148, 149 of the Indian Penal Code.

2. It is the case of the prosecution that on 21st October, 2017, one Mohammed Yusuf Irani lodged a report at Sangli Police Station alleging therein that there is a cross term with his maternal uncle Phiroz Irani and his son Irfan Irani. It is alleged that Phiroz Irani and his son were in a habit of filing false reports against the family of the complainant. It is alleged that on 20th October, 2017 one of the relatives had expired. Both the families were present for performing last rites and rituals upon the dead person. At that time, there were some clashes between Sarfaraz Irani and Irfan Irani as they both presumed that the other had grudge. On the same day, at about 8.15 p.m. Sarfaraz informed his brother (i.e. Complainant) that he has been called to the house of Phiroz Irani. He informed him that he would visit to his house. The complainant had stated that by way of abundant precaution, he had followed to the house of Phiroz Irani. That due to the streetlights, the complainant could see that Phiroz Irani and Maharani Irani caught hold Sarfaraz and Irfan Irani, who happens to be their son had stabbed Sarfaraz in his back. It is also alleged that thereafter, Irfan had threatened the Complainant with dire consequences. It

is alleged that thereafter, the complainant had tried to leave the spot, when he saw Jainabi and and Mariam Irani were dragging Sarfaraz by catching his hair. The Complainant, thereafter, left the spot. Sarfaraz was declared dead on admission.

3. Perused the papers of investigation, more particularly the statements of witnesses, who happens to be the family members of the deceased. They claimed to the eye witnesses. However, the first information report itself reveals that it was only the Complainant, who had followed Sarfaraz to the house of Phiroz Irani. One of the brothers of the deceased had also disclosed that the family of the accused were acting as informers of the police machinery.

4. The postmortem report, more particularly, the column No. 17, specifically shows that the deceased had sustained a single stab injury on the left side of back thoracic region measuring about 3cm x 1cm x depth reaching upto pericardium of heart injury was at a distance of 29cm from left nipple in a vertical direction, oval in shape. There is no other external injury on the person of the deceased. The first informant has specifically stated that Irfan Irani was the author of the stab injury.

5. The learned counsel for the Applicants submits that there was no prelude to the assault. There are no abrasions and contusions to indicate that any other

than the accused had participated in the said incident. The statements of the witnesses are recorded under section 164 of the Criminal Procedure Code. In the 164 statement, the first informant has stated that Jenabi and Maharani Irani had caught hold of the hair of the deceased at the time of assault. However, the same does not corroborate the first information report which was the statement recorded first in point of time after the incident.

6. Taking into consideration the papers of investigation and more particularly the Applicants are women, they deserve to be released on bail. The Applicants in BA No. 769 of 2018 appears to be young women. The Applicant No.1 appears to be a young girl, who is only 19 years' old and it is mentioned, across the bar, that the Applicant No.2 is the mother of two infants and there is no one to look after the children as the entire family members are in the custody. The Applicant in BA No. 770 of 2018 happens to be the mother of the principal accused Irfan, who is more than 50 years' old.

7. The learned APP in both the applications submits that the principal accused Irfan Irani is still absconding and, therefore, Applicants do not deserve to enlarge on bail. However, this Court is of the opinion that just because one accused is absconding, the other accused, more particularly, the women and the family cannot be incarcerated for an indefinite period. It appears that the

charge-sheet is filed against the absconding accused under section 299 of the Criminal Procedure Code.

8. It is made clear that the co-accused shall not claim parity with the present Applicant. The observations are prima facie in nature and are restricted only for the present applications filed under section 439 of the Criminal Procedure Code and shall not be taken into consideration at the time of filing of discharge application or at the time of trial. Hence, the following order:

ORDER

- (i) Bail Application Nos. 769 and 770 of 2018 are allowed.
- (ii) The Applicants be enlarged on bail on furnishing a P.R. Bond of Rs.50,000/- each and one or more solvent sureties in the like amount.
- (iii) The Applicants shall not residing in Sangli Municipal limits or in rural part of Sangli City till the charges are framed.

Both the bail applications are disposed of accordingly in the aforesaid terms.

[SMT. SADHANA S. JADHAV, J.]