

Sequeira

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

**CRIMINAL APPLICATION NO. 1173 OF 2018
IN
CRIMINAL APPEAL NO.338 OF 2018**

Sou.Minakshi Dashrath Koli ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr.Ritesh Thobde, for the Applicant / Appellant.

Ms.M.M.Deshmukh, APP for State - Respondent.

***CORAM : S. S. SHINDE &
MRS.MRIDULA BHATKAR, JJ.
Date : August 30, 2018.***

P.C. :

The Applicant-accused convicted for the offences punishable under section 302 of the Indian Penal Code and sentenced to suffer life imprisonment and fine, by the Judgment and Order dated 9 March 2018 passed by the learned Session Judge Solapur, has moved the application for bail in Appeal.

2. The deceased was a newly born baby girl of three to four hours old. The Applicant-accused is the mother who was admitted in the City hospital, Solapur on 15 December 2014, for delivery. She

delivered a female baby at around 7.59 p.m. It was a normal delivery, thereafter the baby was kept under the warmer and the Applicant-accused was shifted to the Recovery room. The baby was then given to the Applicant-accused for breastfeeding, by the nurse working in the unit. At around 9.30, supervisor examined the baby and found that baby was normal. At around 11.30 p.m. the baby was found dead. Some injury marks were found on the nose and neck of the body. The Applicant-accused was prosecuted and was convicted in the trial Court.

3. The learned counsel for the Applicant - accused submitted that the Applicant-accused is a mother of the three minor daughters and they are totally dependent on the Applicant. The learned counsel pointed and referred to the observations in paragraph no.53 of the judgment, about the economic conditions of the Applicant-accused and also the social conditions where the Applicant-accused was residing with the three daughters and the husband. The learned counsel has submitted that as the mother is in prison, it is difficult for three daughters to survive and throughout the trial the Applicant-accused was on bail.

4. The learned Prosecutor opposes the bail and has submitted that it is a case of murder punishable under section 302 of IPC and therefore, she is not to be released on bail. The learned APP submitted that the trial Court has directed that her five year old

youngest daughter Sushmita is to be kept along with the mother in the jail as per the Jail Manual and her other two daughters are staying with the father

5. We have considered the evidence, the judgment, the submissions of the counsel of both the sides. The fact of total dependency of three minor daughters of 6, 9 and 11 years old approximately, on their mother prevails on our mind while deciding this bail application.

6. The record discloses the motive claimed by the prosecution is the birth of fourth girl child when she was having earlier three daughters. After going through the record prima facie we are of the view that there is nothing to show on record that the fourth baby was unwanted child for the Applicant-accused. We give due weightage to the submissions of the learned counsel for the Applicant-accused in respect of the social and economic conditions of the Applicant-accused when she delivered a fourth girl child. Though it is pointed out by the learned APP that three daughters are at present with the father and a direction is given by the Court that youngest one will stay with Applicant-accused, it is not at all proper arrangement in view of their care and upbringing of the girls. The three daughters cannot be deprived of mother's love, care and protection at this tender and delicate age. Moreover, as per the Jail Manual the child can stay with her mother only upto six years and the

youngest girl now will be of six years of her age. Moreover, nothing is brought on record from the prosecution that the Applicant-accused has abused the liberty which was granted while she was on bail during the trial. In view of the record it is difficult for us to label her as a criminal.

7. In view of the above the Application is allowed.
- a) The Applicant is directed to be released on bail on furnishing fresh bail bond of the same amount with the same solvent sureties in the like amount which was given below in the trial Court.
 - b) The Applicant is directed to report to the concerned police station as per the directions of the Investigating officer.
 - c) The applicant shall not leave the jurisdiction of the police station / Court.

(MRS.MRIDULA BHATKAR, J.)

(S. S. SHINDE, J.)