

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

**CRIMINAL BAIL APPLICATION NO.1375 OF 2017
IN
CRIMINAL APPEAL NO.392 OF 2017**

Bhamabai Shankar Narale

..Applicant

Versus

The State of Maharashtra

..Respondent

**Mr. R. V. Bansode i/by Mr. H. D. Mulla, Advocate for the Applicant.
Mr. Rajan Salvi, APP for the Respondent - State.**

**CORAM : B. R. GAVAI &
B. P COLABAWALLA, JJ.
DATE : 13th FEBRUARY, 2018**

PC.

1] This is an application for suspension of sentence and grant of bail during pendency of the Appeal. Both the accused have been convicted for the offence punishable under Section 302 of the Indian Penal Code, for having committed murder of six months child Shubham, who is the step-son of the accused No.1 - Anusaya.

2] It is the prosecution case that though Sanjay was already married to Alka, he performed second marriage with accused No.1 - Anusaya. Alka had a six months son namely Shubham, so also Anusaya had another son, namely Vishnu. It is the prosecution case that there was dispute between the two wives of Sanjay on account of the property

being entered in the name of Shubham. It is the prosecution case that PW-5 Nirmala who is the sister of Alka had seen both the accused going into the room, where Shubham was found dead. It is further the prosecution case that the present Applicant who is accused No.2 had asked for “Belane” (Wooden Roll), while going inside the room where Shubham was found dead.

3] As held by the Apex Court in the case of Niranjan Singh and another Vs Prabhakar Rajaram Kharote and others reported in (1980) 2 SCC 559, detailed elaboration of evidence should be avoided at the stage of grant of bail.

4] The prosecution case is mainly on the evidence of PW-5 who had seen the accused entering the room where the deceased was found dead and further present Applicant called for “Belane”.

5] It is to be noted that the incident is alleged to have taken place in the morning of 1st April 2013. On the very same day, on the basis of information given by PW-3 - Nilesh an A.D. has been registered. Not only Inquest Panchanama but also Post-mortem has been conducted on the same day. However, neither PW-3 nor the PW-5 have informed about their suspicion on the accused to the Police, though the Police were very

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much available. It is only for the first time on 3rd April 2013 that the PW-4 - Alka, the mother of the deceased lodged complaint.

6] At least, prima-facie there is no explanation for delay of two days in lodging an FIR, this is particularly so, when the Police were very much available on 1st April 2013 itself, when they had come to record the Inquest Panchanama and carry the body for postmortem. Not only that, but PW-3 Nilesh, the husband of PW-5 Nirmala, clearly admits in his evidence that after two days of the death of deceased, they had discussed in the house and thereafter decided to lodge an FIR against the accused persons.

7] The Applicant is a lady aged more than 60 years and as such entitled to special protection under Section 437 of the Criminal Procedure Code.

8] In that view of the matter, we are inclined to allow the Application. The order of sentence during the pendency of the Appeal shall stand stayed. The Applicant is directed to be released on bail on the same terms and conditions as were applicable during trial.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]