

ISM

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

CRIMINAL BAIL APPLICATION NO. 2758 OF 2018

Sarita Sahdev Bharathi

....Applicant

Vs.

The State of Maharashtra

....Respondent

Mr. G. T. Kanchanpurkar Advocate for the applicant

Mr. M. G. Pail APP for the State.

CORAM : PRAKASH D. NAIK, J.

DATED : 21st DECEMBER, 2018

P.C.

This is an application for bail in crime no. I-249-2017 registered with Boisar Police Station for offence punishable under section 302, 201 r/w 34 of the Indian Penal Code.

2 The case of prosecution is that the applicant was arrested in a case registered under the provisions of Immoral Traffic Prevention Act. During the course of interrogation in the said case, applicant had confessed that her husband was liquor addicted and doubting

her character. He used to harass her. In 2004, applicant, with the assistance of her boyfriend (accused no. 2) assaulted her husband with the stone on his head and his dead body was buried in the septic tank of toilet and the same was closed with the help of tiles. The skeleton was recovered from the place mentioned by the applicant/accused. The F.I.R. was registered on 06/12/2017. Applicant was arrested. Accused no. 2 was also arrested on 08/12/2017. On completing investigation, charge-sheet is filed.

3 Applicant preferred an application for bail before the Sessions Court which was rejected by an order dated 15/06/2018. Application preferred by accused no. 2 was allowed by the Sessions Court vide order dated 08/05/2018.

4 The learned Advocate for the applicant submitted that there is no evidence to establish that the applicant has committed murder of her husband, except the alleged confession which is not admissible in evidence. There is no incriminating evidence to show the complicity of the applicant in crime. The incident had allegedly

occurred in 2004. None of the witnesses have stated that the applicant is involved in murder of the deceased. Only on the basis of the statement allegedly made by the applicant while she was in custody in another case which lead to discovery of the skeleton from the septic tank, applicant cannot be convicted. The co-accused has been granted bail. Applicant is in custody from 06/12/2017. Charge-sheet is filed.

5 The learned APP submitted that the skeleton of the deceased was recovered at the instance of the applicant. Applicant, being wife had not lodged any missing complaint. The body of the deceased was buried in septic tank below the toilet which was to the knowledge of the applicant which infers that she has committed the murder.

6 I have perused the charge-sheet. Applicant was interrogated in another case and allegedly during the interrogation, applicant had confessed of having killed her husband in 2004. Although, the incident had occurred in 2004, there was no suspicion, no complaint of applicant's involvement in the crime. The crime was allegedly

committed in connivance with accused no. 2 who has been granted bail by the Sessions Court. Except, the statement of the applicant leading to discovery of the skeleton, there is no incriminating evidence against the applicant. While granting bail to the co-accused, the learned Sessions Judge had observed that there is no eye witness to the incident. Statements of the son of the deceased and his brother were recorded by the police. There was no missing complaint since 2004 by son of the deceased or his brother. Statements of other witnesses also reveal that no one had filed a missing complaint of the deceased since 2004. In such circumstances, prima facie, involvement of accused no. 2 is doubtful. However, application preferred by the applicant was rejected on the ground that the skeleton of the dead body was recovered under the Memorandum Panchanama recorded under section 27 of the Evidence Act at the instance of the applicant. She did not file any missing complaint with the police. The alleged incident had occurred in 2004. As stated herein above, there is no other evidence against the applicant. No complaint was lodged by the son and brother of the deceased. Investigation is completed and

charge-sheet is already filed. Applicant is in custody for a period of about one year. Considering the circumstances, case for grant of bail is made out. Hence, following order.

ORDER

- (I) Criminal Bail Application No. 2758 of 2018 is allowed.
- (II) Applicant is directed to be released on bail in crime no. 249 of 2017 registered with Bhoisar Police Station on furnishing P. R. bond in the sum of Rs. 20,000/- with one or more sureties in the like amount. Applicant is permitted to furnish cash security in the sum of Rs. 20,000/- for a period of 6 weeks.
- (III) Applicant shall attend the Trial Court on the date of hearing of the case regularly, unless exempted by the Court.
- (IV) Application stands disposed of.

[PRAKASH D. NAIK, J.]