

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.154/2018

Sau. Janabai w/o Narayan Rathod ..vs.. State of Maharashtra through PSO
P.S. Jivti, Tq. Jivti, Dist. Chandrapur.

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

Court's or Judge's orders.

Mr. A. D. Hazare, Advocate for applicant.
Mr. M. K. Pathan, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : FEBRUARY 23, 2018

1. The applicant is arrested in connection with Crime No.129/2017 registered with Police Station Jivti, Tq. Jivti, Dist. Chandrapur for an offence punishable under Sections 363, 302 and 201 of the Indian Penal Code.

2. The only submission of the learned counsel for the applicant is that the applicant is only arrested on suspicion and there is no admissible evidence against her. He also submitted that the applicant is a lady aged about 76 years and is languishing in jail. Therefore, the bail be granted to her.

3. In my view, all the words in the dictionary will fall short for describing the applicant and for her acts. The applicant is arrested for killing her granddaughter;

Annapurna, whose age is only 27 days. The post mortem report, which is part and parcel of the charge-sheet, shows that the cause of death is asphyxia, compression over neck. Thus, a girl, who has taken birth only prior to 27 days was, due to inhuman act of the present applicant, forced to take exit from this world. What would have been the condition of that infant when her neck was compressed cannot be described. The said child was only knowing to get herself fed from her mother.

4. Mother of the unfortunate girl is Kamalbai. Her statement shows that on the day of incident, she was not keeping good health. However, the present applicant who is her mother in law directed her to go to the agricultural field. Since on the day of the incident, Kamalbai was not keeping good health, she pleaded with the present applicant that some other member of family namely; Vidya should be sent to the agricultural field. However, on that, the present applicant got enraged and stated as under:

“तीन तीन रांडा पैदा केल्या, तू काही कामाची नाही शेतात
सगळ्यांचे जेवण व पाणी तूच घेऊन जा.”

5. Then the applicant forced Kamalbai to leave her house. At that time, that unfortunate mother was required to leave her breast-feeding child in the house. This shows the mentality of the applicant that though she is a woman

she is against the womanhood. Kamalbai's statement shows that after she returned from the agricultural field, she noticed that her child was missing from the house. On inquiry with the present applicant, the applicant innocently shown her ignorance. Thereafter, when Kamalbai's husband Raosaheb came to the house, this fact was disclosed to him who thereafter lodged a report with Police Station. In the FIR, Raosaheb has stated that looking to the age of the girl and looking to the fact that he was not having enmity with anybody, he is not having suspicion over anybody. Therefore, offence was registered against an unknown person. The offence was registered under Section 363 of the Indian Penal Code.

6. It is quite clear that the victim aged 27 days' girl cannot walk out of the house on her own. During the course of investigation, it appears that the investigating officer could not notice that anybody was seen going away from the house of the applicant along with the said girl and therefore in my view the investigating officer has rightly searched the house of the applicant and the house search panchanama which is part and parcel of this charge-sheet shows that the entire house search was videographed and in the house search, the dead body of that unfortunate girl was found concealed in the heap of cotton. The body was thereafter sent for post mortem and as observed in the earlier part of this order, the cause of death was asphyxia.

7. The statement of Vidya and Bhaurao are also recorded by the investigating officer. They, in clear terms support the version of Kamalbai in all respect. Even the statement of Kamalbai recorded under Section 164 Cr.P.C. shows that the statement does not differ with her earlier statement.

8. From the charge-sheet, it is crystal clear that it is the applicant who was found in company of deceased lastly. Her presence in house is also not disputed by the applicant.

9. From the aforesaid available material in the charge-sheet, in my view, submissions of learned counsel for the applicant that the applicant is only a suspect, is certainly misplaced, having no merit and devoid of any substance.

10. Insofar as the age of the applicant is concerned, looking to the heinous act of the applicant, merely because she is of advanced age, it cannot be considered because she has curtailed life of a 27 day's girl. The age alone cannot be criterion for consideration of the bail application. The Court also needs to look into the way and the method adopted by the applicant to accomplish the desired effect of the crime and also the available evidence on record. Therefore, merely because she is a lady aged about 76 years, that is not sufficient for releasing her on bail.

11. While granting regular bails, the Court is required to consider various factors like; nature of offence, evidence collected during the course of investigation, chance of applicant influencing the prosecution witnesses, if he/she is released on bail; amongst others.

12. The crime in question is the most heinous one as it could be seen from the charge-sheet.

13. Though there is no eye witness, from the evidence of Kamalbai, Vidya and Bhausahab, it is clear that it is only the applicant who was in the company lastly with the child before her disappearance from the cradle and thereafter recovery of the child's body from the heap of cotton in the house itself. Further, after the child's disappearance, she was seen in nobody's company. Further, from the statements of Kamalbai, Vidya and Raosaheb, it is clear that in the home only the applicant's writ used to run. The prosecution witnesses are close relatives of applicant. Therefore, looking to the dominant nature of the applicant, there is every possibility that she may influence those witnesses when the case goes for trial, if she is released on bail

14. Insofar as ill health of the applicant is concerned, there is nothing on record to show from what disease the applicant is suffering.

15. In view of the discussion in the preceding paragraphs, I am of the view that no case is made out by the applicant for grant of bail. Apart from the fact that the crime in question envisages the minimum punishment for life, after completion of trial, it is always open for the prosecution to put forth its case before the Court which shall be trying the said trial that the case falls within the category of the rarest of rare case, which invites capital punishment.

The application is therefore rejected.

JUDGE

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