

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELATION OF BAIL NO. 76 OF 2018

Arjun Vikram Badhe,
Age : 55 years, Occu. Agriculture,
R/o Kekat Jalgaon, Tq. Paithan,
Dist. Aurangabad. ...Applicant

Versus

- 1] The State of Maharashtra,
through Assistant Police
Inspector,
Police Station, Chaklamba,
Dist. Beed.
- 2] Narmadabai Ambadas Garkal,
Age : 58 years, Occu. House
Wife,
- 3] Eknath Ambadas Garkal,
Age : 24 years, Occu. Service as
Police Constable at Police
Station, Pathardi, Dist.
Ahmednagar.
- 4] Gahininath Ambadas Garkal,
Age : 28 years, Occu.
Agriculture,
- 5] Ambadas Dinkar Garkal,
Age : 50 years, Occu.
Agriculture,
All R/o Pargaon, Tq. Shirur,
Dist. Beed. ...Respondents

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Mr. H. M. Shaikh, Advocate for Applicant.
Mr. S. Y. Mahajan, A. P. P. for Respondent
No. 1.
Mr. N. B. Narwade, Advocate for Respondent Nos.
2 to 5.

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CORAM : V. M. DESHPANDE, J.

DATE : 19TH MARCH, 2019

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith and heard finally by consent of both the parties.

02. I have heard Mr. H. M. Shaikh, the learned Counsel for the applicant, Mr. S. Y. Mahajan, the learned A. P. P. for the State-respondent No. 1 and Mr. N. B. Narwade, the learned Counsel for the respondent Nos. 2 to 5-accused.

03. Sangita is the deceased. Respondent No. 2 Narmadabai is her mother-in-law. Respondent No. 3 Eknath is her brother-in-law, respondent No. 4-Gahininath Garkal - her husband and 5-Ambadas Garkal is her father-in-law.

04. Present is the application for cancellation of anticipatory bail granted in favour of Narmadabai and Eknath by the learned Additional Sessions Judge, Beed, dated 4.6.2018 in Criminal Bail Application No. 228 of 2018 and grant of regular bail in favour of the respondent No. 4-Gahininath and respondent No. 5-Ambadas by the learned Additional Sessions Judge, Beed on 4.6.2018 in Criminal Bail Application No. 240 of 2018.

05. The present application for cancellation

of bail is filed by Arjun Kisan Bade-father of the deceased-Sangita. He is also the first informant. He lodged the report on 15.4.2018 with Police Station, Chaklamba, Dist. Beed, on 15.4.2018. The incident, in which Sangita lost her life is dated 13.4.2018. On the basis of the report, the offence was registered vide C. R. No. 58 of 2018 for the offences punishable under Sections 302, 304-B, 498-A and read with Section 34 of the I. P. C. and Section 4 of the Dowry Prohibition Act. The respondents No. 4 and 5 i.e. husband and father-in-law were arrested on 16.4.2018.

06. According to the learned Counsel for the applicant, the respondent No. 3-Eknath, who is working as a Police Constable at Pathardi, Police Station, Dist. Ahmednagar, has influenced the course of the investigation and, therefore, the bail granted in favour of the respondents be canceled. It is also his submission that the deceased has met with homicidal death at the hands of the accused persons. Therefore, the bail granted to them be canceled.

07. The learned A. P. P. and the Counsel for the accused submitted that during the pendency of

the present application for cancellation of bail, the investigating agency has already filed charge-sheet before the Court of Law. According to the charge-sheet, the respondent Nos. 2 to 5 are charge-sheeted for the offences punishable under Section 304-B, 306 and 498-A read with Section 34 of the I. P. C. and Section 4 of the Dowry Prohibition Act.

08. With the assistance of the Counsel, I perused the P. M. report placed before me. It shows that there were no external injuries on the body of deceased Sangita. The Autopsy Surgeons gave their opinion that death is due to drowning. Though, in the P. M. report, final opinion is reserved till receipt of chemical analysis report of viscera. The charge-sheet shows that C. A. report is received and it does not contain any poison in the viscera. It will be always open for the Autopsy Surgeon to tender his final opinion even during the course of the trial after examining the chemical analyzer's report.

09. Though the first information report was for the offence punishable under Sections 302 of the I. P. C., the Investigating Officer in his wisdom after collection of the evidence during the course

of the investigation, found that the evidence is not there for sending the accused persons to face trial for the offence punishable under Section 302 of the I. P. C. However, it shall be always open for the learned Judge of the Court below, after perusal of the entire charge-sheet and after recording of the evidence, to add the offence punishable under Section 302 of the I. P. C.

10. However, at this stage, the statements of Mandabai, Vaishali and Ashabai show that on the day of the incident, they have witnessed the incident of Sangita jumping in the lake.

11. The submission of the learned Counsel for the applicant that Eknath, being the member of the Constabulary, has influenced the course of the investigation, in my view, can not be accepted without there being any foundation. The investigation is conducted by the senior Police Officer. Therefore, *prima facie* the submission on the part of the learned Counsel for the applicant that the Constable will influence the course of the investigation, can not be accepted.

12. The Court below has granted anticipatory bail in favour of Narmadabai and Eknath on 4.6.2018

and regular bail in favour of Gahininath and Ambadas on the very same day. They were also directed to attend Investigating Officer on every Wednesday and Sunday till the filing of the charge-sheet. It is not the claim of the learned Prosecutor that the respondent Nos. 2 to 5-accused have any time flouted the condition imposed upon them by the learned Trial Court.

13. Since the charge-sheet is already filed and in view of the specific statements of the witnesses Mandabai, Vaishali and Ashabai, which show that they witnessed the incident of Sangita taking jump in the lake, have to be given due importance. The statements of the 3 persons Mandabai, Vaishali and Ashabai have also been recorded under Section 164 of Cr. P. C. Consequently, I see no merit in the present application to interfere with the discretion exercised by the learned Trial Court. Consequently the application fails and the same is dismissed. Rule is discharged.

[V. M. DESHPANDE]

JUDGE

Dahibhate/-