

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

CRIMINAL BAIL APPLICATION NO. 2151 OF 2019

Sanjay Dnyanoba Yadav	 Applicant
Versus	
The State of Maharashtra	 Respondent

**WITH
CRIMINAL APPLICATION NO. 01 OF 2019**

Ms. Jyoti Digambar Yadav	 Intervener
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IN THE MATTER BEWEEN

Sanjay Dnyanoba Yadav	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Kuldeep S. Patil, Advocate for the Applicant.
Mr. Prashant Jadhav, APP for the State/Respondent.
Mr. Samadhan A. Kashid, Advocate for Intervener.

**CORAM :SARANG V. KOTWAL, J.
DATE :27th SEPTEMBER, 2019**

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 88 of 2019 registered with Jat Police Station, Dist. Sangli under sections 363, 302 and 201 r/w. 34 of

the Indian Penal Code. Initially, the offence was registered only under section 363 of the IPC, but subsequently, Section 302 was added. The applicant was arrested on 11/03/2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. The gist of the prosecution story as mentioned in the charge-sheet is that, on 08/03/2019 after 12.30p.m. a child Shivram Yadav, aged 2 years 4 months was drowned by applicant's wife Sarika in a water container in her house and committed his murder. The applicant had allegedly helped her in disposing of the dead body.

3. The FIR was lodged by Jyoti, mother of the deceased. She has stated in her FIR that on 08/03/2019 at about 12.30p.m. her son Shivam had gone out of the house for playing. He did not come back for quite some time. The informant and others searched for him at various places and with their friends and relatives, but he was not found and therefore, the FIR was lodged U/s.363 of the

IPC at Jat Police station. The investigation was carried out. The panchanama outside the house of the applicant was conducted on 08/03/2019 between 6.30p.m. to 7.05p.m. which mentions that somebody has seen Shivram in front of the house of the applicant, however, that spot panchanama did not show anything significant. Thereafter, on 09/03/2019 again the applicant's house was searched between 4.00p.m. to 5.35p.m. Some scrapping from the walls suggestive of red coloured stains were collected. There is no C.A. report connecting that scrapping with the offence. However, the prosecution case is that the applicant's wife, out of jealousy, had drowned the child in a water container and committed his murder. The Postmortem notes show that the cause of death was, "Death due to drowning, however, viscera preserved for chemical analysis". The medical opinion obtained by the police shows that the death had occurred about 16 hours to 48 hours prior to conduct of postmortem examination. The injuries mentioned in the postmortem notes were all postmortem injuries. There was sign of decomposition. There were no antemortem injuries on the dead body. The dead body was found floating in water in a well in the

field of one Babar on 10/03/2019 at around 7.30a.m. in the morning. The statement of this witness Baban Babar was recorded first on 08/03/2019, wherein, he had expressed suspicion against the applicant's wife. His supplementary statement was recorded on 15/03/2019 after arrest of the applicant, wherein, he had stated for the first time that in the night between 09/03/2019 to 10/03/2019 the applicant was seen returning from his field towards his house at around 2.30a.m., thereby suggesting that, at that time perhaps the dead body of the child was thrown in the well on the way.

4. Heard Mr. Kuldeep Patil, learned counsel for the Applicant and Mr. Samadhan Kashid, learned counsel for the Intervener and Mr. Prashant Jadhav, learned APP for the State/Respondent.

5. Shri. Patil submitted that, even as per the prosecution case, the applicant had not committed murder of the deceased. At the highest, the allegations are that, he had helped his wife in

disposing the dead body, but even that circumstance is not established by any material against the applicant. He submitted that, in fact, there is nothing to show that the wife of the applicant had committed offence.

6. Learned APP Shri. Jadhav, as well as, Mr. Kashid, learned counsel for the Intervener submitted that the statement of witness Baban Babar shows that the applicant was moving around in suspicious circumstances carrying a clothe on add hours at 2.30a.m. in the night between 09/03/2019 and 10/03/2019 i.e. a strong circumstance against him.

7. I have considered these submissions. The child went missing since 12.30p.m. It is not the prosecution case that, at that time, the applicant was in the house. Suspicion was expressed against the applicant's wife based on some vague statements given by a girl child aged around 2 to 3 years. Apart from the statement of Babar, there is nothing against the present applicant. Even that statement of Babar recorded on 15/03/2019, is not incriminating

against the applicant. According to the prosecution case, this witness was the first person who had seen the dead body floating in a well, but his statement was not recorded immediately on 10/03/2019 when he had seen the dead body. Instead, his supplementary statement was recorded on 15/03/2019, wherein, he has stated that he had seen the applicant in the night between 9th & 10th March, 2019, as mentioned earlier. But the medical opinion shows that the child had died at least a couple of days prior to this witness having seen the applicant in that night. Therefore, this circumstance does not really take the prosecution case any further. In any case, there is absolutely no material, even no circumstance against the present applicant suggesting that he had played any part in murdering the child. In this view of the matter, since there is a very weak case against the applicant, he deserves to be released on bail. However, the trial court shall not be influenced by these observations.

8. Hence, the following order :

ORDER

- (i) In connection with C.R. No. 88 of 2019 registered with Jat Police Station, Dist. Sangli, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.
- (iii) The intervention application is also disposed of accordingly.

(SARANG V. KOTWAL, J.)