

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 883 OF 2019**

1. Sabirabano Yusuf Sayed,	
2. Soleha Salim Sayed	...Applicants
Versus	
The Senior Inspector of Police & Anr.	...Respondents

Mr. Rizwan Merchant a/w Mr. Faiz Merchant, Mr. Mahesh Ahire and
Mr. Faisal Shaikh I/b Rizwan Merchant & Associates for the Applicants

Mr. A. A. Palkar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 21st JUNE 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicants seek their enlargement
on bail in connection with C.R. No. 181 of 2018 registered with the
Antop Hill Police Station, for the alleged offences punishable under
Sections 302, 120B, 201 r/w 34 of the Indian Penal Code.

3 Learned counsel for the applicants submits that there is
no material to show the applicants' complicity in the alleged offence.

He submits that the conduct of the applicants in trying to resuscitate Mehnaz (deceased) and informing the doctor and taking Mehnaz to the hospital, points to their innocence. He submits that the applicants are ladies, who are in custody for the last one year. He further submits that some of the co-accused have been granted anticipatory bail by this Court.

4 Learned A.P.P opposed the application. He submitted that although the prosecution case rests on circumstantial evidence, the circumstances on record clearly point to the applicants complicity in the crime. He submitted that admittedly, the applicants were present in the house, when the alleged incident took place. He submitted that the injuries on the applicants' person shows that the deceased had put up some resistance, resulting in the said injuries i.e. bite marks, laceration and bruises. He relied on the injury certificates of the applicants in support of the said contention. He further relied on the statement of the neighbours and deceased's best friends' mother-Samira Ansari, in support of his submission to show the applicants' conduct and motive.

5 Perused the papers. Deceased-Mehnaz, aged 15 years, was the niece of applicant No.1's husband. At a very young age, Mehnaz's mother expired and her father deserted her, pursuant to which, Mehnaz was being looked after by the applicants' family. Mehnaz was studying in the 9th standard at the relevant time. The incident is alleged to have taken place on 4th May 2018 at about 1:30 p.m. According to the prosecution, the neighbours, on hearing cries at the applicants' house, rushed to the spot. The statement of Shagufta Khan-a neighbour, shows that when she rushed to the house, she saw that the applicants were crying and that Mehnaz was unconscious and there was no movement. She has stated that Mehnaz's grandmother was pacing up and down and appeared to be frightened and that applicant No. 2-Soleha was trying to resuscitate Mehnaz and co-accused Umaira, a minor (Mehnaz's cousin) was rubbing Mehnaz's hands and feet. She has stated that when she inquired, she was told that Mehnaz had fallen in the bathroom and had become unconscious. Thereafter, Mehnaz was taken to the Keny Hospital by applicant No.1, where, after examining, she was asked by

the doctors to be taken to Sion Hospital. When Mehnaz was taken to the Sion Hospital, she was declared dead before admission by Dr. Samir.

On receipt of information, PSI left for Sion Hospital and met Dr. Samir at the Hospital. It is stated that Dr. Samir mentioned strangulation marks on the neck in the report, declaring the death of Mehnaz. Thereafter, inquest was done. During the panchanama, a ligature mark starting from right to left side was found on the neck of Mehnaz. The police, after noticing the ligature marks on Mehnaz's neck, made an entry of Unnatural Death No. 38/2018 with Antop Hill Police Station, as Mehnaz (deceased) was found to have been strangled. It appears that in the entry made in the EPR message, the applicant No. 1 mentioned that Mehnaz fell unconscious in the bathroom and died. Since there was variance in the cause of death mentioned in the EPR entry and the situation as appearing, independent inquiries were made by the complainant with the applicants and other relatives with whom Mehnaz was staying.

On 5th May 2019, post-mortem of Mehnaz was performed at Sion Hospital, Mumbai. The probable cause of death has been mentioned as, “Ligature strangulation of neck (unnatural)”. On investigation of the said unnatural death, the aforesaid C.R. was registered as against the applicants and others. During the course of investigation, a white coloured *odhani*, which was used in the said crime, was recovered from the cupboard, at the instance of the applicant No. 1. The statement of Samira Ansari (Mehnaz's friend's mother) throws light on the motive. She has stated that on one occasion in January 2018, Mehnaz had run away from house and had come to stay with her. She has stated that when she inquired with Mehnaz, she disclosed that the applicant No. 1 would assault her, would not give her permission to go out anywhere and would discriminate between Mehnaz and Umaira (Mehnaz's cousin). She has stated that when she inquired with Mehnaz, why she ran away from the house, she disclosed that the family members had made false allegations against her, that she had committed theft of money and had shouted at her.

6 As noted above, the prosecution case rests entirely on circumstantial evidence. Admittedly, the applicants were present in the house when the alleged incident took place along with Mehnaz's grandmother, who is stated to be paralytic and Umaira (Mehnaz's cousin). The evidence also shows that the applicants had received injuries on their persons i.e. bruises, lacerations and bite marks. The same is evident from the injury certificates of the said applicants. It *prima facie* appears that the applicants had received the said injuries probably in a tussle with the deceased Mehnaz.

7 Although learned counsel for the applicants submits that when the neighbours rushed to the applicants' house, applicant No. 2-Soleha was seen resuscitating Mehnaz and thereafter, Mehnaz was immediately taken to hospital, however, the fact remains that Mehnaz was declared to be dead before admission in Sion Hospital. Column 17 of the post-mortem report shows the following injuries were found on Mehnaz:

“1) Soft, dark red, abraded ligature mark present on the neck and below the level of thyroid cartilage extending from right lateral aspect of neck to left lateral aspect, having total length 16 cm and

maximum width 1.5 cm. It is situated 3 cm below right angle of mandible, 7 cm below chin and 5 cm below left angle of mandible. On cut section, the tissues beneath the ligature mark appear soft and red; neck vessels; cartilages and hyoid bone are intact. Muscle haematoma present in cricothyroid muscle and right thyroid muscle.

2) *Two scratch abrasions situated one below the other present on left paratracheal region, situated 1.5 cm from midline. Upper of size 0.3 x 0.1 cm and lower of size 0.5 x 0.1 cm, both are red in colour.*

3) *Abrasion with brown scab present on dorsum of left little toe of size 0.8 x 0.2 cm."*

The cause of death is stated to be 'Ligature strangulation of neck (unnatural)'. The applicants appeared to have given a false story to the neighbours, by stating that Mehnaz fell down and became unconscious, when infact, Mehnaz had sustained a ligature mark on her neck. Learned counsel for the applicants submits that the possibility of Mehnaz committing suicide cannot be ruled out. It may be noted, that if Mehnaz had committed suicide, *odhani* would have been seized from the spot. The *odhani* was seized at the instance of applicant No. 1, from the cupboard. *Prima facie*, it appears that the cause of death is 'ligature strangulation of neck', as reflected in the Death Certificate. The other co-accused were enlarged on bail, as they

were not present in the house at the relevant time. The juvenile accused-Umaira was enlarged on bail by the Juvenile Court.

8 *Prima facie*, considering the material against the applicants, this is not a fit case to enlarge the applicants on bail. The application is accordingly rejected.

9 However, the trial is expedited. The learned Judge to decide the case as expeditiously as possible, and in any event, within twelve months from the date of receipt of this order.

10 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.