

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

**CRIMINAL APPLICATION NO.647 OF 2019
IN
CRIMINAL APPEAL NO.201 OF 2019**

Smt. Samidha Samir Pimple

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Ashok P. Mundargi, Senior Advocate a/w. Mr.Niranjan Mundargi i/b. Mr.Keral Mehta, Advocate for the Applicant.

Mrs.P.P. Shinde, APP for the Respondent-State.

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**CORAM : B. P. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATE : MAY 3, 2019.

P.C.:

Accused no.1 on bail during trial has challenged her conviction in Criminal Appeal No.201 of 2019, and has also moved this application for release on bail. Submission of learned senior counsel is that there is no material to connect accused no.1 with the death, as alleged, and, there is no evidence to demonstrate presence of accused no.2 at her residence for committing the offence together. He states that dispute about alleged relationship between accused no.1 and accused no.2 need not be considered at this stage.

2 He points out that because of lack of this evidence only, accused no.1 was given bail by this Court on 18th January, 2017, in Criminal Bail Application No.560 of 2016, during trial. According to him, after receipt of Postmortem Report, investigating officer writes a letter to doctor obtaining opinion and then proceeds to seize the pillow, allegedly used by both accused persons to close the nose and mouth of husband of accused no.1. The Chemical Analysis Report on pillow does not support any such theory.

3 Learned APP states that movement of accused nos.1 and 2 together in the afternoon on 9th July, 2015, when the murder was committed is recorded in CCTV footage and that footage has been duly proved before trial Court. Accused no.1 also tampered with evidence in relation to servicing of a scooty and that fact is also established. She contends that this evidence is sufficient to show guilty mind and at this stage, this Court should not intervene in the matter. She also states that doubt expressed by investigating officer is supported by the evidence of doctor, who accepts that asphyxia could have been introduced by pressing pillow on nose and mouth of deceased.

4 Learned senior counsel in brief reply states that accused no.1 has son aged about 10 years and her presence at house is necessary in the interest of his welfare.

5 Postmortem Report finds cause of death to be asphyxia of unknown origin. Evidence of said doctor shows that death may have occurred within 12 hours of last meal and more than one person has participated in the act.

6 It is the case of the prosecution that after 4:00 p.m. on 9th July, 2015, accused no.1 gave a call to her brother-in-law and informed that her husband had fall in bathroom and was lying there. The brother of deceased therefore came to their residence and then the offence came to light.

7 The facts pointed out by learned senior counsel are not in dispute. Postmortem report mentions asphyxia of unknown origin as a cause. The letter written by investigating officer thereafter and response thereto to by the said doctor is not in dispute. The investigating officer mentions that both accused persons together pressed pillow on nose and mouth of deceased, which resulted into asphyxia. However, the pillow

seized by investigating officer is found not to contain any blood or saliva, and, therefore, has not been connected with the crime at all.

8 Though there are CCTV footages, which *prima facie* show accused nos.1 and 2 together between 1:15 p.m. to 1:30 p.m. in the afternoon, the investigating officer could not bring on record any evidence to show that accused no.2 had entered residence of deceased.

9 In this situation, we find that reasons which prompted this Court on 18th January, 2017, to grant bail to accused no.1 hold field even now.

10 Accordingly, we allow this Application.

11 We direct release of applicant accused no.1, on bail subject to her furnishing Personal Bond in the sum of Rs.25,000/- and furnishing two sureties in like amount to the satisfaction of trial Court, on the following conditions:

- (a) Applicant shall place on record the address at which she shall always be available during this

appeal along with her contact numbers and contact numbers of the sureties;

(b) Applicant shall also keep Vakalatnama of her advocate alive till final hearing of this Appeal and shall not entitled to separate notice for that purpose;

(c) Applicant shall mark her attendance with the Registrar/Superintendent of Additional Sessions Judge, Palghar on first working day of the month after every two months;

(d) Failure to observe any of the terms and conditions of this order, shall result in cancellation of bail and entitle to respondents to take her in custody forthwith;

12 Criminal Applications is accordingly allowed and disposed of.

(PRAKASH D. NAIK, J.) (B.P. DHARMADHIKARI, J.)