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

CRIMINAL BAIL APPLICATION NO.774 OF 2018

Surekha Kakad	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
CRIMINAL BAIL APPLICATION NO.1004 OF 2018***

Vasima Shaikh	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
CRIMINAL BAIL APPLICATION NO.1913 OF 2018***

Arti Dilip Shingne	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
CRIMINAL BAIL APPLICATION NO.1977 OF 2018***

Shital Vasanta Shegokar	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
CRIMINAL BAIL APPLICATION NO.2610 OF 2018***

Manisha Pokharkar	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH
CRIMINAL BAIL APPLICATION NO.2651 OF 2018

Bindu Naykode	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.A.P.Mundargi, Senior Counsel i/b Mr.V.G.Bagade, for the Applicants in B.A.No.774 of 2018 and B.A. No.2610 of 2018.

Mr.V.G.Bagade, for the Applicants in B.A.No.1004 of 2018 and B.A. No.2651 of 2018.

Mr.Veerdhawal Deshmukh, for the Applicant in B.A.No.1913 of 2018.

Mr.G.S.Kawale, for the Applicant in B.A.No.1977 of 2018.

Mr. Rajiv Patil, Senior Counsel/Special Public Prosecutor a/w Ms.P. P. Shinde, A.P.P for the Respondent - State.

Police Inspector – Prabha Raul, Crime Branch, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 8th JULY, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By these applications, the Applicants seek their enlargement on bail in connection with C.R.No.263 of 2017 registered with the Nagpada Police Station, Mumbai, (later transferred to D.C.B., C.I.D. Mumbai, Unit - III and renumbered as C.R.No.27 of 2017), for the alleged

offences punishable under Sections 302, 120-B, 201, 506(II) r/w 34 of the Indian Penal Code.

3. Learned Senior Counsel, Mr.Mundargi, submits that taking the prosecution case as it stands, no offence as alleged under Section 302 of the Indian Penal Code is disclosed, against the accused. Learned Senior Counsel relied on the medical case papers i.e. the injury certificate, which is on page 121 of Criminal Bail Application No.774 of 2018 issued by Dr.Khan and the postmortem report, in support of his submissions. He submitted that the location on which deceased – Manjula Govind Shetye, was assaulted would also show that there was no intention to cause her death. He submitted that although in the FIR, it is alleged that one of the accused put a stick in Manjula's private part, the same is not borne out by the medical record. He submitted that the applicants are suspended and as such there is no question of threatening and tampering with the witnesses.

4. Learned Counsel, Mr.Bagade, supported the submissions advanced by the learned Senior Counsel, Mr.Mundargi. Mr.Bagade submitted that the injuries mentioned in the postmortem report could also

be possible due to mishandling of the dead body. He submitted that the sanction accorded under Section 197 of Code of Criminal Procedure, was post cognizance i.e. after the Court had taken cognizance and as such the said cognizance was bad in law. Mr.Bagade also submitted that the 176 report has not been submitted by the Magistrate to the Court. Mr.Bagade, in support of his submissions, relied on the Judgment of this Court in the case of *Madhav Manikrao Dhande v/s State*¹ and the Judgment of the Apex Court in the case of *Baijnath:G.V.Kale v/s State of Madhya Pradesh*².

5. Learned Counsel, Mr.Deshmukh, submitted that as far as applicant – Arti Dilip Shingne, is concerned, no overt act has been attributed to her and that the only allegation as against her was that she pulled Manjula’s hair and took her to the barrack from the office. He submitted that there is nothing to show that the applicant – Arti, was present in the office, at the relevant time, where Manjula was allegedly assaulted.

1 2012 All.M.R.(Cri.) 2473

2 1966 Cri.L.J.179

6. Learned Special Public Prosecutor opposed the applications. He has filed an affidavit of Prabha Raul, Police Inspector, Crime Branch, Mumbai. Learned Special Public Prosecutor submitted that Manjula (deceased) was brutally assaulted by the accused. He relied on the statements of eye-witnesses and the postmortem report, in support of his submission, to show the complicity of the applicants - accused, in the said crime.

7. Perused the papers. According to the complainant – Mariyam Imran Shaikh (co-inmate), the incident took place on 23rd June, 2017. She has stated that Manjula (deceased) was transferred to Byculla Jail from Yerwada Jail, three months prior to the incident. She has stated that Manjula had completed 13 years of imprisonment and as Manjula's conduct was good, she was given the position of a warder in barrack no.5 and to help the jailor. The complainant has alleged that on 23rd June, 2017, Manjula distributed eggs and pav/bread to the prisoners and that two eggs and 5 pav/breads were falling short, pursuant to which, the jail superintendent – Manisha Pokharkar (Applicant), questioned Manjula about it. She has stated that at about 10.30 a.m., Manjula took an inmate - Varsha for meeting/visit

and that Varsha returned at 10.45 a.m. after her meeting/visit. According to the complainant, six lady police staff including the jailor and constables assaulted Manjula, inside the office at about 10.30 a.m. and thereafter dragged her into barrack no.5, which is on the first floor of the jail. She has alleged that the applicant – accused, pushed Manjula on the floor and that all the six ladies brutally assaulted Manjula with sticks and fist and kick blows. According to the complainant, Manjula, a warder, was not obeying the orders of the jailor and constables and that there were complaints from the inmates that the warder was distributing damaged eggs to them and would give them short time for meeting their relatives and would ask co-inmates to do her personal work like massage etc. The complainant has alleged that a stick was also inserted in Manjula's private part. As Manjula collapsed in the jail, later in the day, a doctor was summoned, however, as no lady doctor was available, Dr.Khan examined Manjula, and found that Manjula's B.P. was not recordable and accordingly stated that Manjula should be admitted to the hospital. At 7.30 p.m., Manjula was taken to the hospital, where she was declared dead on arrival. The statements of several witnesses (co-inmates) who had witnessed the incident, have been recorded, which clearly points to the complicity of the

applicants. All the witnesses have stated the manner in which Manjula was brutally assaulted. The CCTV footage of the spot, i.e. the common area has been collected during investigation, which shows that the accused had dragged Manjula from the office to the barrack. The statements of the eye-witnesses also reveal that after Manjula was assaulted, the applicants – accused did not provide any medical facility to her and even threatened the jail inmates (i.e. eye-witnesses) to not complain/disclose about the same, to any one. Some of the witnesses have stated that Manjula was begging them to stop the assault, however, the accused continued to assault her, one after the other. According to one of the witness – Saidulnnisa, she was slapped by the accused as she had helped Manjula. The said witness has stated that the assault was a pre-meditated one, as the applicant – Manisha Pokharkar had disclosed her plan to assault Manjula, as she had assaulted another inmate in the past. According to the said witness, the inmates were instructed not to come to the aid of Manjula after the assault. The witnesses have seen Manjula being dragged from the office to barrack no.5 and being assaulted. It is alleged that applicant – Arti had dragged Manjula by her hair from the office to the barrack, in these circumstances, it cannot be said that applicant – Arti, had no overt act. As

far as the injury certificate, relied upon by the learned senior counsel, which is on page 121 of Criminal Bail Application No.774 of 2018, given by Dr.Khan is concerned, wherein it is stated that 'no obvious external injury noted', nothing much turns on the same. It appears that no detailed examination was done of Manjula, at that time and hence the remark. The postmortem report shows that Manjula had sustained as many as 14 injuries on her person i.e. contusion (muscle deep) present over upper left lateral part of upper lip, reddish in colour; railway line contusion on left scapular region; railway line contusion over midback region; contusion over right scapular region from right shoulder tip and 18 cm from midline, muscle deep; contusion over left lateral upper part of scapular region from left shoulder tip and 22 cm from midline, reddish in colour; contusion (muscle deep) over lateral part of left buttock, reddish in colour; contusion over right lateral part of right buttock, muscle deep, reddish in colour; contusion (muscle deep) over middle part right thigh posterior aspect, 8 cm above popliteal fossa and 35 cm from right anterior superior iliac spine, reddish in colour; contusion (muscle deep) over superlateral part of right thigh posterior aspect 19 cm above popliteal fossa and 24 cm from right anterior superior iliac spine, reddish in colour; contusion (muscle deep) over lower

part of left calf region, 20 cm below popliteal fossa and 15 cm above left lateral malleolus, reddish in colour; contusion (muscle deep) over upper part of left calf region, 4 cm below popliteal fossa and 31 cm above left lateral malleolus, reddish in colour; contusion over anterior part of left thigh, middle part 16 cm above left knee joint, muscle deep, reddish in colour; contusion over posterior aspect of right index finger, muscle deep, reddish in colour and contusion over posterior aspect of right middle finger, muscle deep, reddish in colour. The said injuries are stated to be ante-mortem. It is stated in the postmortem report that all the injuries were collectively sufficient to cause death in the ordinary course of nature. The cause of death is stated to be 'Death due to multiple injuries (multiple contusions). Associated findings:- pulmonary oedema with pulmonary Tuberculosis and Tuberculosis of ovary' (unnatural).

8. Considering the material on record, this is not a fit case to enlarge any of the applicants on bail. The possibility of the applicants even influencing the witnesses, who are jail inmates, cannot be ruled out. The trial of the applicants has also commenced and the 2nd witness is in the witness box. The prosecution intends to examine about 40 witnesses.

9. Considering the serious allegations as against the applicants and the material on record and the fact that the trial has commenced, the applications for bail are rejected and disposed of as such. However, the trial of the applicants is expedited. Whether or not the cognizance taken by the Court is correct or not, can be raised before the trial Court. It is not necessary to consider the same in the aforesaid bail applications. Similarly, it is always open for the applicants to apply for the Report of the Magistrate before the trial Court, if so permissible. If such an application is made, the learned Judge to decide the same, on its own merits, in accordance with law.

10. It is made clear, that the observations made herein are *prima facie* for deciding the aforesaid applications, and the learned Judge shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.