

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1191 OF 2020

Pundalik s/o Subhash Pillewad,
Age 25 years, Occupation Labour,
R/o Raher Tq. Naigaon Dist.Nanded. **...Applicant**

VERSUS

The State of Maharashtra,
Through Police Station, Koontur
Dist. Nanded. **...Respondent**

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Advocate for Applicant : Mr. H. I. Pathan.
APP for Respondent : Mr. V. S. Badakh.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 26-11-2020.

ORDER :

1. Present application has been filed under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.183 of 2018, dated 04-11-2018, registered with Koontur Police Station Tq.Naigaon Dist.Nanded, for the offence punishable under Section 302 of Indian Penal Code.
2. Heard learned Advocate for the applicant Mr. H. I. Pathan and learned APP for respondent-State Mr. V. S. Badakh.
3. It has been vehemently submitted on behalf of the applicant that

the applicant is the husband of deceased. They were residing with the parents of the present applicant, his younger brother, wife of brother and son of deceased and applicant who was nine months old. The applicant and the deceased got married on 14-12-2015. It is contended by the informant who is the mother of deceased that six months after the marriage, the applicant started harassing the deceased on the count of raising suspicion over her character. The applicant is resident of Raher and the informant used to reside at Dharmabad. The informant claims that she had met deceased on 02-11-2018 when there was a 'Javal' function of the son of the applicant, but then her FIR itself shows that though she found her daughter in nervous mood yet even on inquiry by her, the daughter did not disclose anything. But then she says that on the next date i.e. on 03-11-2018, she was informed by one Kalavatibai Yashwantwad that the parents of the present applicant was shifting deceased to hospital. It was also stated that when the informant went to the house of the applicant, she found her daughter in dead condition, and none of them who were present there gave satisfactory answer. She says that the present applicant was not present, and therefore, she raised suspicion. On 04-11-2018 she got informant from the doctor who conducted post-mortem that the

deceased was strangled, and therefore, she has lodged the report. That means, the FIR is nothing but based on suspicion. The investigation is over and the charge-sheet is also filed. Therefore, the physical custody of the applicant is not required. He has to take care of his son as well as old parents, and therefore, he be released on bail.

4. Per contra, the learned APP submitted that though the charge-sheet has been filed, the evidence which has been collected would show that the present applicant used to raise suspicion over the character of the deceased. She was driven out of the house by the applicant after six months of marriage. Then a meeting was arranged which was attended by the applicant, his parents, younger brother and elder brother, wife of brother. In presence of all these persons the applicant had assured that he will not commit any mistake, and therefore, deceased started cohabiting with the applicant and then she got the son. Still applicant raising suspicion over her character. The applicant used to assault the deceased. Nervousness of the daughter was seen by the mother on 02-11-2018, and on the next day the deceased was found dead in her house. It is under suspicions circumstances taking into

consideration the fact that the applicant and deceased got married in 2015 and the incident had taken place within three years of her marriage. Even Section 304-B of Indian Penal Code would be attracted. When the evidence is against the applicant, he deserves no sympathy. Merely because he is in jail since 04-11-2018, leniency is not required to be shown.

5. At the outset, merits of the case cannot be compromised when it comes to even in bail claimed under Section 439 of Code of Criminal Procedure. One more fact before going into the other aspects is required to be considered that though the applicant appears to have been arrested on 04-11-2018, he filed bail application for the first time on 04-05-2019 before learned Additional Sessions Judge, Biloli. The said bail application has been rejected on 26-08-2019, and he is approaching this Court now on 08-10-2020. He cannot try to take advantage of his own latches by saying that it is pandemic situation.

6. As the application has been filed under Section 439 of Code of Criminal Procedure and that too after the charge-sheet has been filed, the evidence that has been collected by the Investigating Officer is required to be considered. Most part of the FIR has been

referred to earlier, and therefore, it is not repeated. However, it is to be noted that as per the informant when she went from Dharmabad to Raher still the dead body of the deceased was in house. It is specifically stated that the informant had seen the dead body in the house and then she made inquiry with the parents of the applicant who gave her evasive answers. At that time she could not find the present applicant there. On the next day also when post-mortem report was explained by the Medical Officer, the informant states that the applicant was absent. If we consider the inquest panchanama together with the post-morte report, it can be seen that there is injury to the chin of the deceased. The post-mortem report gives the probable cause of death as, "after having performed the post-mortem examination on the dead body of Sapna Pundlik Pillewad, 20/F, Resident of Raher of PM No.58 of Station diary No.03/2018, the cause of death is asphyxia due to throttling (neck compression)." Thus, it can be seen that the death is unnatural and homicidal.

7. Further the statement of witnesses would show that there was dispute between the deceased and the present applicant and the present applicant used to raise suspicion over the character of the

deceased. Statement of witness Ananda Narwade would show that his jeep was engaged to take the deceased to doctor. Apart from that, he says that when he made inquiry with the father of the applicant, then the father of the applicant disclosed that the deceased and the applicant were the only persons present there, and the incident had taken place when the parents of the applicant were in the house of one Kalawati Yashwantwad. Present applicant went in the house of Kalawati, gave his son to his parents, and thereafter, he went away. Statement of Kalawati is also on the same line. Further her statement is also taken under Section 164 of Code of Criminal Procedure which also shows that the parents of the applicant in her house and at that time the present applicant gave the custody of his son to his parents and went away without speaking anything. Thus there appears to be a case of custodial death, and when there is evidence against the present applicant, he deserves no sympathy of releasing on bail. Therefore, when there is *prima facie* evidence against the present applicant, present application for bail cannot be considered. Hence, application is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-