

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

922 BAIL APPLICATION NO.1354 OF 2020

Manda w/o Shivaji Take
Age : 60 years, occ : household
R/o Jeur Haibati, Tal. Newasa,
District Ahmednagar.

Applicant

Versus

The State of Maharashtra
Through Police Inspector,
Newasa Police Station,
District Ahmednagar.

Respondent

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Smt. P.V Langhe, Advocate for the applicant.
Mr. A.S. Shinde, A.P.P. for respondent / State.

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CORAM : V.K. JADHAV, J.

DATE : 10.12.2020

ORDER :-

1. The applicant is seeking regular bail in connection with Crime No. 652 of 2019 registered with Newasa Police Station, District Ahmednagar for the offences punishable under Sections 302, 307, 341, 324, 323, 201, 504, 506 read with Section 34 of the Indian Penal Code. Her Bail Applications below Exhs. 22 and 26 in Sessions Case No. 12 of 2020 with similar prayer came to be rejected by the learned Additional Sessions Judge, Newasa, District Ahmednagar vide order dated 22.10.2020.

2. Heard both sides.

3. Learned Counsel for the applicant submits that the investigation is over and charge-sheet has been submitted. Learned Counsel submits that this is the first application before this court after filing of the charge-sheet. The applicant is in jail in connection with the present crime since 03.10.2019. Learned Counsel submits that deceased Sambhaji and co-accused Shivaji are real brothers interse and the present applicant is the wife of co-accused Shivaji. There is long standing enmity on account of civil dispute in respect of agricultural field between the brothers. Learned Counsel submits that the incident as alleged seems to have taken place all of a sudden without any premeditation. Learned counsel submits that informant who is also an injured person, has alleged that the co-accused Sonali who happened to be the daughter-in-law of co-accused Shivaji and the present applicant who is the wife of co-accused Shivaji, had come with chilly powder and it has been further alleged that the said daughter-in-law co-accused Sonali has thrown the chilly powder in the eyes of deceased Sambhaji. Learned Counsel submits that however thereafter, as alleged, both the deceased persons i.e. Sambhaji and Santosh, the informant and injured witness Ashok Vishnu Shinde sat in the car and

while they were leaving that spot, co-accused Sharad obstructed the said car and co-accused Shivaji and co-accused Sharad have assaulted deceased Sambhaji and deceased Santosh.

4. Learned Counsel submits that the injured witness Ashok Shinde has given different version and according to him, the present applicant has thrown chilly powder in the eyes of deceased Santosh Ghune. Learned Counsel submits that except the role as ascribed to the applicant by the informant and the injured witness Ashok Shinde though contradictory to each other, no further role has been ascribed to the applicant. The applicant is a woman, 60 years of age, languished in jail for a considerable period in connection with the present crime. There is no criminal history. All the family members are in jail. Applicant is ready to abide the conditions if imposed by this Court. Applicant may be released on bail.

5. The learned A.P.P. has strongly resisted the application on the ground that there are eye witnesses to the incident and unless there is prior concert of mind, the incident would not have taken place as alleged. Learned A.P.P. submits that the statements of the informant so also the injured witness Ashok Shinde are not contradictory to

each other. Learned A.P.P. submits that after assault on deceased Sambhaji, informant ran away from the spot and as such he could not notice the act of the present applicant. However, the injured eye witness Ashok Shinde has described the act of the applicant. According to him, the present applicant has thrown chilly powder in the eyes of deceased Santosh Ghune. Applicant has thus shared the common intention with other accused persons. It is a serious offence wherein two persons came to be murdered. Applicant may not be released on bail.

6. On going through the allegations made in the complaint and on perusal of the charge-sheet particularly the F.I.R., it appears that on 02.10.2019 deceased Sambhaji alongwith the informant left house for proceeding towards his field situated at village Jeur in his Maruti Suzuki car. On way deceased Sambhaji had parked his car and both of them sat in the car of injured witness Ashok Vishnu Shinde. Deceased Santosh had also joined them and thus four of them had gone to the agricultural field situated at village Jeur in the car of witness Ashok Shinde. On reaching there, as per the desire of deceased Sambhaji they had seen the agricultural land and started returning to the car which was parked on the road. However, on the way co-accused Shivaji had

obstructed them and he was armed with weapon axe. Even co-accused Shivaji had started giving abuses to deceased Sambhaji. However, the informant and witness Ashok Shinde both of them had tried to pacify the quarrel. Thereafter they started proceeding towards the car. Even at that time co-accused Shivaji was following them holding axe in his hand and verbal altercations were going on between them.

7. It is further alleged by the informant that thereafter co-accused Sonali who happened to be the daughter-in-law of co-accused Shivaji alongwith the present applicant rushed to that place and they were carrying chilly powder. It is further alleged by the informant that co-accused Sonali has thrown chilly powder in the eyes of deceased Sambhaji. According to the informant, thereafter they sat in the car, turned the car and started proceeding. However, at that time co-accused Sharad came there on motorcycle, obstructed the said car with his motorcycle, got down from the motorcycle by holding wooden log in his hand. It is further alleged that co-accused Shivaji and co-accused Sharad assaulted everybody. Informant and the said injured Ashok Shinde saved themselves by running away from the spot. However, deceased Sambhaji and the said person boarded the car later namely Santosh Ghune died on the spot

because of the beatings extended to them.

8. So far as the present applicant is concerned, the informant has not ascribed any role to her except carrying chilly powder. However, the injured witness Ashok Shinde has stated in his police statement that the present applicant has thrown chilly powder in the eyes of deceased Santosh Ghune. As per the allegations made in the complaint, initially the chilly powder was thrown and even thereafter all the occupants of the car left that place by turning the car. Thereafter co-accused Sharad and co-accused Shivaji assaulted all the occupants in the car. In view of the same, I do not find any substance in the submissions of learned A.P.P. that the informant has not seen the act of the present applicant and injured Ashok Shinde has rightly described the role played by the present applicant.

9. Applicant is a woman 60 years of age. It further appears that there is long standing enmity between the two families on account of dispute of agricultural field. Deceased Sambhaji and co-accused Shivaji are real brothers interse. It further appears that only after all the persons including two deceased persons and the informant and injured witness Ashok Shinde sat in the car and turned the said car for proceeding further, co-accused Sharad came there on

motorcycle and thereafter the incident was triggered. Prima facie it is not possible to believe that the present applicant has shared common intention alongwith those accused persons. Thus, considering the entire aspect of the case and since the applicant is an aged woman, suffering from various ailments, I am inclined to release the applicant on bail. Hence, the following order.

ORDER

1. The application is hereby allowed.
2. The applicant Manda w/o Shivaji Take in connection with Crime No. 652 of 2019 registered with Newasa Police Station, District Ahmednagar for the offences punishable under Sections 302, 307, 341, 324, 323, 201, 504, 506 read with Section 34 of the Indian Penal Code, be released on furnishing personal bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one solvent surety of the like amount, on the following conditions :
 - (i) The applicant shall not tamper with the prosecution evidence in any manner.
6. Application is accordingly disposed of.

(V.K. JADHAV, J.)