

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.705 OF 2020

Mrs. Suvarna Anil Hendre
Mrs. Sushila Shantaram Bhusare .. Applicants

Vs.

The State of Maharashtra .. Respondent

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Mr. Anil S. Shitole for the Applicants.

Ms. M.M. Deshmukh, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 17TH DECEMBER, 2020.

P.C:-

1. The Applicants before the Court are two women who are seeking their release on bail in C.R. No.1044 of 2019 for the offence punishable under Sections 302, 323, 504 and Section 34 of the IPC registered with Chakan Police Station, District Pune. On completion of investigation, charge-sheet has been presented and the case is registered as R.C.C. No.899 of 2019.

2. Heard Mr. Shitole, learned counsel for the Applicants and Ms. Deshmukh, learned A.P.P. for the State.

3. When the Court expressed its disinclination to grant any relief to Applicant No.1, learned counsel for the Applicants does not press the Application qua Applicant No.1 – Suvarna. As regards Applicant No.2 - Sushila is concerned, she has been implicated as Accused No.4 and is a lady aged 65 years.

4. The case of the prosecution is to the effect that all the accused persons have caused the death of deceased Kalpana Shitole, wife of the Complainant. The Complainant is Vikaram Narayan Shitole, who has stated that he runs a Kirana shop and resides in the given address with his wife, daughter Pranali and son Vaibhav. He has rented 23 rooms in his house and that is his source of livelihood. Anil Hendre (A-1) is his neighbour who resides there with his wife, son, mother-in-law - Sushila (Applicant No.2). The relationship between the two families is strained and often quibbles used to take place. Two days prior to the incident, the Complainant had erected a fence to which the accused persons had objected and a quarrel had ensued. Anil Hendre had gone to the police station and lodged a complaint in respect of the said incident.

5. On 19/07/2019 when the Complainant returned home at

6.30 a.m. after morning walk, his wife Kalpana was cleaning utensils. He, therefore, opened the Kirana shop and was sitting there. After sometime, he went for a bath in the bathroom and his daughter was sitting in the shop. His son Vaibhav gave a frantic cry and shouted that his mother Kalpana Shitole was being taken to the house by Anil Hendre, his wife Suvarna Hendre, son Siddhesh Hendre and mother-in-law Sushila Bhusare and they have bolted the door from inside. Hurriedly, they approached Anil Hendre's house and they could hear her scream from inside. The Complainant and his son gave fist blows on the door and entered into the house by breaking the doors. They saw deceased Kalpana was lying in a pool of blood and she was bleeding from her head, mouth and nose. Near her body, a piece of stone and a lid of pressure cooker were lying. It is alleged that Anil Hendre and Siddhesh Hendre were holding wooden sticks and Suvarna was holding a piece of stone whereas Sushila was standing near his wife. On noticing the Complainant and his son, Anil Hendre and Siddhesh Hendre ran at them and hit the Complainant on his hand and his son got a blow on his head. It is alleged that Applicant No.2 Sushila handed over a wooden rod to Anil Hendre and with the help of this rod, Anil Hendre started hitting the Complainant. Anil Hendre and Suvarna Hendre are alleged to have screamed that they have killed the Complainant's wife and nobody should interfere. The neighbours were summoned and at that time all accused persons had locked themselves in another room. His wife

was admitted to the hospital where she succumbed to the injuries. It is in the wake of these allegations the investigating machinery was set into motion and, on completion of investigation, charge-sheet was filed by compiling the necessary material.

6. The Complainant and his son were also medically examined. Anil Hendre had also sustained injuries and two of the injuries reflect fracture on left Ulna and fracture of dislocation of the lower tooth, which has been described as grievous injuries. Statements of Vikram Shitole as well as Vaibhav Shitole are recorded under Section 164 of the Cr.P.C. In his statement under Section 164 of the Cr.P.C. Vikram Shitole as stated that Accused Sushila was holding a piece of stone and she was standing near the dead body of his wife. Pertinent to note that the name of Applicant No.2 is Sushila Bhusare whereas, the last name of Suvarna (Applicant No.1) is Hendre. Learned counsel for the Applicants states that since the statement under Section 164 Cr.P.C. records that Sushila Hendre was holding a piece of stone and standing near the body of the deceased, it creates a doubt as this statement is contradictory to the version of the Complainant in the complaint where Sushila is attributed a role of only standing near the body of his wife and Suvarna is alleged to have a piece of stone in her hand. The statement of Vaibhav recorded under Section 164 of the Cr.P.C. also refers to Sushila Hendre with a piece of stone in her hand. The contradiction of this statement with the statement recorded under

Section 161 of the Cr.P.C. is a matter of trial. It is, no doubt, true that the offence is serious and the Applicants have been charged under Section 302 of the IPC with the aid of Section 34 of the IPC. The common intention can be very well discerned from the case of the prosecution as Applicant No.2 was also present on the spot. However, what role is attributed to her and whether she can be convicted under Section 302 of the IPC would depend upon the manner in which the prosecution adduces the evidence establishing the common intention on her part with other accused persons.

7. Considering the fact that Applicant No.2 is a lady aged 65 years and she has been arrested on 14/10/2019 and since then is incarcerated and also coupled with the fact that she being an old lady is not likely to tamper with the prosecution evidence or flee the course of justice, particularly when her daughter, grandson and son-in-law, all are incarcerated. Taking into account the case of the prosecution and the aforesaid circumstances, the Applicant No.2 is held entitled to be released on bail. Hence the following order:

:ORDER:

- (a) The Applicant No.2 – Sushila Shantaram Bhusare, shall be released on bail in C.R. No.1044 of 2019 registered with Chakan Police Station, District Pune on executing P.R. bond to the extent of Rs.25,000/-

and furnishing one or two sureties of the like amount.

(b) The Applicant No.2 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(c) The Applicant No.2 shall mark her attendance before the Sessions Court where the trial is pending once in two months and attend to the trial regularly when it proceeds unless exempted by the Trial Court.

8. The Application is partly allowed.

9. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

SMT. BHARATI DANGRE, J.