

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

CRIMINAL BAIL APPLICATION NO.1632 OF 2019

Sunita Sharad Choudhari

... Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Sachin H. Deokar, Advocate for the Applicant.

Mr. S. S. Pednekar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 28th FEBRUARY, 2020.

PC :

1. The applicant prays for bail in connection with C.R. No. 161 of 2018, registered with Malegaon Chhavani Police Station, Nashik, for the offences punishable under Sections 302, 328, 201 r/w. 34 of Indian Penal Code, 1860 ('IPC' for short).

2. The prosecution case is that, on 4th October, 2018, PSI Rahul Patil lodged FIR stating that, on 2nd October, 2018 information was received from Police control room that 17 year old girl has died in suspiciously, in Navin Vasti, Mahajan Tent House and her relatives are hurriedly performing last rites. The complainant and others proceeded for investigation. It was learnt that, the relatives of the deceased are proceeding towards the graveyard to perform funeral of the victim girl. The police proceeded towards the graveyard. Several

persons had participated in the funeral. They were stopped by the police and told that post-mortem of the deceased is required to be conducted and thereafter, they can perform last rites. At that time father of the girl and cousin Nilesh Choudhari told the police that the victim had died due to heart attack and the relatives had gathered to perform last rites. They threatened the police that they cannot stop them from performing funeral. They also instigated persons who had joined the funeral. The situation was getting out of control. The complainant gave information to police control room and called for Riot Control Squad. The victim was taken by Ambulance to the hospital for post-mortem. ADR No. 3 was registered under Section 174 of Criminal Procedure Code, 1908 ('Cr.PC' for short). Inquest panchnama was conducted. Nail injuries were noticed on the neck and minor injuries were also noticed on the chin of the deceased. Her tongue was found pressed below her teeth, which resulted in bleeding. Post-mortem was conducted. The cause of death was Cardio respiratory arrest due to the spinal cord injury due to atlanto-occipital joint however viscera preserved. The police were orally informed that smell of poisons substance can be felt from the stomach of the deceased. There is possibility that she has consumed poisonous substance. Body of the deceased was handed over to relatives for last rites. Information was received from secret

informant that the deceased girl was having love affair with one Om Chinchole. The boy was called at police station for enquiry. He stated that, the deceased was known to him since last two years. They were in love. Father of the deceased learnt about their affair. She was assaulted. She had left the house. She was convinced by friend to return back to her home. She was not interested in returning home and expressed fear that her father would kill her. On 1st October, 2018 the victim had met him for celebrating birthday. Victim died on 2nd October, 2018. On enquiry the relatives of the victim gave evasive answers. Their version was in-consistence with the medical opinion.

3. According to the prosecution, the accused had conspired to kill deceased. The applicant had purchased sleeping pills. The tablets were crushed and mixed in vegetable. The victim consumed food mixed with tablets. She slept in the night. The accused killed her. The father of the victim caught her legs. The applicant caught her hands. Accused Nilesh throttled her by pressing her neck. Her mouth was pressed by pillow. She died.

4. Investigation proceeded. Statement of witnesses were recorded. Incriminating articles were recovered. CCTV footage were recovered. Accused were arrested. Charge-sheet was filed.

5. The applicant had preferred an application for bail before the Session Court, the application was rejected, by order dated 11th March, 2019.

6. Learned Advocate for the applicant submitted that the case is based on circumstantial evidence. The applicant is mother of deceased. She would not kill her daughter. There is no eye witness to the incident. The prosecution is relying on confessional statement of accused No. 1. Which is not admissible in evidence. The applicants cannot be subjected to custody for indefinite period, on the basis of suspicion and inferences. There are no strong circumstances to establish involvement of the applicant in the crime. The motive is weak. The case of the prosecution against the applicant is that, she has brought sleeping pills from the medical shop. It is also alleged that the applicant and the other accused killed the deceased by strangulating her. However, this is only inference which is not supported by legal evidence. The prosecution has relied upon the version of the accused. The medical shopkeeper have stated that, the applicant had gone to the shop for buying tablets which was not available at his shop. He told the accused to try at another shop. Except this there is nothing on record to show that the applicant had purchased the sleeping pills from medical shop. Without prescription of doctor no medical shopkeeper would give sleeping pills.

Therefore, the prosecution case that the applicant had purchased sleeping pills cannot be accepted. The discrepancy in the post-mortem report, cause of death, injury sustained by the deceased and role attributed to the accused, it is difficult to accept that on account of affair the applicant would kill her daughter.

7. Learned APP submitted that offence is of serious nature. Since deceased was having in affair with a boy, she was subjected to death by the accused. The family of the deceased was trying to perform last rites hurriedly. The post-mortem report shows that the victim had died homicidal death. There are strong circumstances against the applicant. She had purchased sleeping pills from the medical shop. Her presence is established in CCTV footage at the medical shop. Since the tablet was not available in the said shop she went to another shop and purchased the same. The strip of tablet and the clothes of the victim recovered from applicant. Statement of witnesses recorded during investigation, attributed strong motive for committing crime. The conduct of the applicant and the other accused was suspicious and abnormal. The applicant has killed her daughter, which shows her mental setup and do not deserve to be released on bail.

8. I have perused the charge-sheet. This is an unfortunate

incident where it is alleged that, the parents and cousin of the 17 year old girl had murdered her in the house, on account of affair with one boy. There is ample evidence on record to show the active involvement of the applicant in the crime. Post-mortem report shows that, death is due to cardio respiratory arrest due to the spinal cord injury due to the atlanto-occipital joint however viscera preserved. The conduct of the accused was suspicious. They were trying to perform last rites without informing police about death of victim. The intention was to commit to perform last rites by avoiding post-mortem. The father and cousin of the victim had threatened the police. Extra police force was required to be called. The death has occurred in the house. The victim was in custody of the applicant. Panchnama dated 6th October, 2018 indicate the presence of the applicant was recorded in CCTV footage in the medical store. She had shown some chit to the shopkeeper. Thus, it is apparent that, the applicant had gone to medical shop. Tablets were not available in the shop where her presence was recorded by CCTV. Then allegedly she went to another shop and procured the tablets. Empty strip of tablets was recovered at the substance of applicant. False explanation was given by the accused that the victim had died due to heart attack. Statement of witnesses and friends of the deceased supports the motive for committing murder. The C.A. report shows that

organic compound Amitriptyline Hydrochloride (Tryptomer) in exhibit Nos. (1) and (2) are positive.

9. In view of the aforesaid circumstances, no case for grant of bail is made out.

10. Hence, I pass the following order:

ORDER

i) Bail Application No. 1632 of 2019, is rejected.

(PRAKASH D. NAIK, J.)