

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

CRIMINAL BAIL APPLICATION NO. 3223 OF 2019

Deepali Prakash Tirlotkar
Aged 28 Yrs. An adult, Indian Inhabitant,
Residing at Tirlotkar Chawl, Khotwadi,
Phirozshah Mehta Street, Santacruz (West)
Mumbai 400 049. ... Applicant

Versus

The State of Maharashtra ... Respondent

.....

Mr. C. K. Talekar, Advocate for the Applicant.
Mr. A. R. Kapadnis, APP for the Respondent – State.
Mr. Sanjay Sarolkar, P.S.I. Santacruz Police Station, Present.

.....

CORAM : PRAKASH D. NAIK, J.
DATE : 16th DECEMBER, 2020.

PER COURT:

1. The applicant is seeking bail in C.R. No. 233 of 2019 registered with Santacruz Police Station, Mumbai for offences punishable under Sections, 302, 182, 201 r/w Section 34 of Indian Penal Code (for short “IPC”). The applicant was arrested on 22nd May, 2019.

2. The case of the prosecution is that on 22nd May, 2019 dead body of the deceased who was brother of applicant was found in gunny bag. It was identified by the applicant. First Information

Report (for short “FIR”) was registered. During investigation, it was revealed that the deceased was drug addict. He was harassing his family members. He was cause of nuisance to the family members. On 22nd May, 2019 he returned home in intoxicated condition. He was assaulted by applicant and others. The father of the applicant strangled the deceased. Applicant had assaulted him by using kitchen appliance (Tawa). Cause of death mentioned in post-mortem report is asphyxia due to strangulation.

3. Learned advocate for the applicant submitted that there is no evidence to show that, who has killed the deceased. The cause of death is strangulation which is not attributed to the applicant. The prosecution is relying upon the statement of the accused which is not admissible in evidence. At the most there is evidence for the offence punishable under Section 201 of IPC. The father and mother of the applicant were arrested and released on bail. The co-accused Raees Ahmed Ansari, who was attributed the role of commission of offence under Section 201 of IPC is granted bail.

4. Learned APP submitted that the applicant is sister of the deceased. All the accused were responsible for committing murder of the deceased. The victim was murdered since he was the drug addict and harassing family members. The death has occurred in the house.

The victim was in custody of the accused at the time of his murder. There is C.C.T.V. footage which shows that, the accused were carrying dead body of the victim in gunny bag and it was tried to be disposed of.

5. Undisputedly, there is no eye witness to the incident. The case is primarily based on circumstantial evidence. The applicant is sister of the deceased. The father and mother of victim were granted bail by the Sessions Court. While granting bail to the father of the applicant, it was observed that, there is no sufficient evidence to show his involvement in actual assault on the deceased. The other accused had disclosed his involvement. There is no other evidence against him. The act causing disappearance of certain evidence would amount to offence under Section 201 of IPC. The mother of deceased Jyoti Prakash Tirlotkar is also granted bail by the Sessions Court vide order dated 30th July, 2019. While granting bail to her, it was observed that the said accused is not involved in committing murder of deceased Nikhil. The other accused Raees Ansari was attributed role of disposing dead body in connivance with other accused. He was granted bail vide order dated 1st July, 2019 by Sessions Court. While rejecting the application of the applicant it was observed that the accused had disclosed how the deceased was

killed by using baking pan (Tava) by giving blows on the head. The witnesses have referred to earlier dispute between family members. The applicant was with the deceased till he breathed his last. There is sufficient evidence against the applicant and she is likely to influence the witnesses if released on bail. The tenor of the order would indicate that, reference is made to the statement of the accused made while in custody. It is difficult to distinguish the case of the applicant from the case of mother and father of the applicant, who were granted bail. Taking into consideration the aforesaid circumstances, case for grant of bail is made out. Hence, I pass the following order.

ORDER

- (i) Bail Application No.3223 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 233 of 2019 registered with Santacruz Police Station, Mumbai, on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;

(iii) The applicant is permitted to furnish cash bail security in the sum of Rs.25,000/- for a period of Eight weeks in lieu of surety.

(iv) It is clarified that the observations made in this order are prima facie for considering the application for bail and the trial Court shall not be influenced by the same during the trial.

(v) Application stands disposed of accordingly.

6. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)