

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.76 OF 2021

Akshida Kunjya @ Kunjilal Chavan

... Applicant

Versus

The State of Maharashtra

... Respondent

.....
Mr. A. M. Gaikwad, Advocate for applicant.

Mr. S. Y. Mahajan, APP for respondent – State.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23rd February, 2021

ORDER :-

1. Present bail application has been filed under section 439 of code of criminal procedure, by original accused No. 1 who came to be arrested on 25.8.2020 in connection with Crime No. 341 of 2020 registered with Belwandi police station, district Ahmednagar for the offence under Sections 395, 120-B of Indian Penal Code.

2. Heard learned Advocate Mr. A. M. Gaikwad for the applicant and learned APP Mr. S. Y. Mahajan for respondent-State.

3. It has been vehemently submitted on behalf of applicant that now the investigation is over and the physical custody of the applicant is no

longer required by the police authorities. It would take long time to stand the trial of the applicant. Applicant is 55 year old lady and no active role is attributed to her either in the First Information Report or by the witnesses in their statements. Nothing has been recovered at her instance during the course of the investigation. Perusal of the FIR would show that there is total suppression of the real incident that had taken place. The informant has not disclosed the said incident completely in which four persons were murdered and offence in respect of that incident has been filed in which the informant in this case is one of the accused. Three out of those four persons are the sons of the present applicant. The incident is stated to have taken place on the count of supply of gold at a cheaper rate. Even the informant had suspicion that some untoward incident would take place. The informant had taken chilli powder along with her and also a knife was asked to be taken by her colleagues. This action on the part of the informant and the persons along with her at that time would indicate that they had come with some intention at the said place. There is inordinate delay in lodging the FIR, just to save the skin by the informant. Learned advocate prayed for releasing the applicant on bail.

4. Learned APP strongly submitted that the applicant is not entitled for the release on bail, as she is involved in one of the serious crime.

There is ample evidence against the present applicant. She has taken active part in settlement of the transaction between the informant and Suresh. It was represented by said Suresh that the Gold is available with them at a cheaper rate and he himself had contacted the informant. In the earlier round of settlement, the price was fixed though it was clearly stated by the informant earlier that she was not having that much amount for purchase of gold. The fact shows that when the representation was made that the gold is available at cheaper rate, then it would have been collected illegally. Thereafter, the facts disclosed in the FIR would show that informant and her men were called at a lonely place and it was the present applicant who had taken them there. This indicates that the applicant was part of that conspiracy. When there was attempt on the part of the applicant and her men to take away the valuable articles from informant and others, they had resisted and there appears to be murder of four persons. The act on the part of the present applicant cannot be justified in any way.

5. At the outset, the physical custody of the applicant appears to be not required for the purpose of investigation, as the charge-sheet is also filed. Now, it is required to be seen as to what kind of evidence is collected against the present applicant. There appears to be delay in lodging the FIR, but whether it is fatal or not would be decided by the

Trial Court at the end of the Trial. However, fact remains that in connection with the incident, there is offence registered against the informant in this case for the offence punishable under Section 302 r/w 34 of Indian Penal Code.

6. The informant has come with a case that there was call to Naresh, her distant nephew from one Suresh and Sandip who were unknown to them stating that they have 2 Kg solid gold at a cheaper rate. They told those persons that they do not have that much amount. Thereafter, those persons insisted that they should take half kilogram gold at least. After negotiations, she says that they had decided to go to see the sample. They went by car. Applicant was present there with those persons. One gold coin was shown as sample. Informant wanted to check it, so took with her. Though Suresh and Sandip were saying that she should give Rs.25,000/- for that, yet, informant had given only Rs.500/-. She got it checked with goldsmith and found it to be real gold. Then they decided to purchase 250 gm. of gold and collected the amount. After establishing contact, date was fixed for the meeting and purchase of the gold. Informant was alongwith her nephew Naresh, daughter-in-law, Naresh's friend and driver. They were carrying amount of Rs.3,00,000/-. Informant has stated that she was anticipating trouble and therefore, had taken chilli powder in her purse and asked her nephew to take

knife. They were asking Sandip and Suresh about the place of meeting. Informant was asked to come to Visapur phata. Present applicant was then introduced as mother and they were asked to give the amount in her hand. Amount of Rs.2,00,000/- was given to Suresh. He counted it and then gave Rs.50,000/- to Sandip. Amount of Rs.35,000/- was given to Suresh, who in turn gave it to applicant. Thereafter, Sandip shouted and about 25-30 armed persons attacked informant and others. Applicant and others thereafter fled away. There was scuffle between those persons and articles from informant were grabbed. The said incident had taken place on 20.08.2020 around 4.00 p.m.; whereas the FIR has been lodged on 24.08.2020.

7. Thus, it can be seen that specific role has been attributed to the present applicant. There is recovery of Rs.7,000/- and pass book of one Premraj Ramesh Patil maintained with Bank of Maharashtra, Jalgaon branch from present applicant. Co-accused Shabrya was posed as Suresh and absconding accused Krushna was posed as Sandip for informant. They are also sons of applicant. No doubt, there appears to be death of other three sons of present applicant in the incident; however, the manner in which the offence is stated to have been committed, disentitles the present applicant from getting bail. Three more accused are still absconding including said Krushna, husband of applicant.

Major part of the stolen property is still not recovered. The representation that so much of gold is available with applicant and her family members itself shows that it would have been collected illegally. Police authorities are clearly of the opinion that if the applicant is released on bail, she would abscond. Under such circumstance, the bail application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm