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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

19 BAIL APPLICATION NO.147 OF 2021

WITH

APPLN/507/2021 IN BA/147/2021

SONALI W/O SATISH WAKADE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Karpe Rahul R.
Mrs. DS Jape, APP for Respondent-State;
Mr. VP Latange, Adv. To assist APP

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 8th March, 2021.

PER COURT :-

1. Criminal Application No.507/2021 moved to assist APP is allowed and disposed of.

2. Present applicant has been arrested in connection with CR No.416/2020 dated 3.5.2020, registered with Shrigonda police station, Tq. Sangamner, District Ahmednagar for the offences punishable under Sections 302, 120(B), 109, 201 read with 34 of IPC. She has filed the present application under Section 439 of Cr.P.C.

3. Heard Mr. Karpe learned Advocate appearing for the applicant; Mrs. DS Jape, learned

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APP for the State, well assisted by learned Advocate Mr. Latange.

4. It has been vehemently submitted on behalf of the applicant that investigation is over and charge sheet is filed on 3.5.2020 before the concerned Magistrate. Perusal of the entire record would show that the FIR was against unknown persons and then police have come to the conclusion that the applicant is having illicit relations with accused No.1 – Dattatraya Ankush Pathade. In fact, the applicant is sister-in-law, i.e. brother's wife of the deceased and daughter-in-law of the informant. The statements of the informant, other brothers-in-law; mother-in-law; husband and sister-in-law of the applicant would show that they were absolutely not aware about the alleged illicit relations and they state that they came to know from the police. After accused No.1 was arrested, he gave memorandum, stating that there was such illicit relation between him and the present applicant and this fact was known to the deceased. Thereafter, the deceased, by giving threat to defame them, started illegal demands from the

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applicant and, therefore, they had hatched up the conspiracy. The present applicant had made phone call to accused No.1 on 2.5.2020 at about 8.00 pm and then he went on his motorcycle by taking a knife and committed the murder of the deceased. It is stated that thereafter he has disclosed the clothes and the weapon. Supplementary statement of husband of the present applicant would show that the alleged mobile, from which the present applicant had give a call to accused No.1, the sim-card therein stood in the name of the deceased. The record further states that the accused No.1 was having good relations with the entire family and the entire family states they had never suspected that there is any such illicit relations. There is absolutely no evidence about involvement of the present applicant and, therefore, she deserves to be release don bail.

5. Per contra, the learned APP strongly opposed the application and submitted that though the FIR is against unknown persons, it can be seen from the post-mortem report that the deceased had sustained 17 surface injuries and the cause of

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death is stated to be due to hemorrhagic shock. The involvement of the applicant can be seen from the statement of accused No.1 and the fact that she was using the mobile phone, though it might be in the name of the deceased. She is involved in the heinous crime and, therefore, the applicant does not deserve any sympathy.

6. At the outset, it can be seen that the investigation is over and charge sheet is filed. Under such circumstance, physical custody of the applicant is no longer required for the purpose of investigation. The evidence that is collected in respect of the present matter is required to be considered. The FIR is against the unknown persons and even the informant has stated that initially, it was felt that the deceased might have received injury due to the iron spring, which was put for keeping the pomegranate trees. At the place, the deceased might have got entangled with those springs. But then when the relatives saw the dead body at Rural hospital, Shrigonda, they could see so many injuries and thereafter, offence under Section 302 of IPC came to be lodged against

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unknown persons. At this prima facie stage, the fact will have to be recorded that there is no such document on record which would show as to how the police officer reached to the conclusion that accused No.1 is involved in the matter. But then he has been arrested and it appears that he has given memorandum and then discovered certain articles under section 27 of the Indian Evidence Act. Now, it would be for the concerned Court to consider as to which part of the said statement/memorandum is admissible and which is not. The only fact, which this Court can consider, is that upon this statement, involvement of the present applicant is stated to have been revealed and the role attributed in that statement to the present applicant is of giving a phone call. Now, taking into consideration the supplementary statement of husband of the present applicant, the said sim-card is in the name of deceased – Mukund. Though it appears that the requisition was made to the concerned company of the mobile to give CDR and SDR, copy of the charge sheet, which is produced on record, does not contain the said CDR and SDR. We are not concerned with the role played by accused

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No.1 or what was his relations with the entire family as well as with the applicant. But, the fact remains, that none of the family members of the deceased, including the husband, state that at any earlier point of time, he had any kind of suspicion about the alleged illicit relations between the wife and Dattatraya. Their statements either under Section 161 or 164 of Cr.P.C are on the same lines. They are giving picture that only after the fact was revealed by the police to them, they came to know about the said fact. Admittedly, the applicant was not present at the place of the offence and the physical role is not attributed by the Investigating agency to the present applicant. Therefore, as regards the present applicant is concerned, the evidence is circumstantial and unless the chain of events is proved, it cannot be said that the prosecution would be successful in proving the offence against the applicant. Under such circumstance, the applicant deserves to be released on bail, however, with stringent conditions, taking into consideration the fact that all the witnesses are the near relatives. Hence the following order, -

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ORDER

i. The Bail Application stands allowed.

ii. The applicant - SONALI W/O SATISH WAKADE be released on bail in connection with CR No.416/2020 dated 3.5.2020, registered with Shrigonda police station, Tq. Sangamner, District Ahmednagar for the offences punishable under Sections 302, 120(B), 109, 201 read with 34 of IPC on PR bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

iii. The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

iv. The applicant shall not enter in village Aadhalgaon, Wakade vasti, Tq. Shrigonda District Ahmednagar and shall reside elsewhere, till conclusion of the trial.

v. Along with submitting the bail papers before the learned Trial Judge, the applicant shall give her complete address of the place of her residence where she intends to reside till end of the trial.

vi. The applicant shall also give the said information to the Investigating officer along with mobile number and

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shall comply with the requirements set out in Para No.12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

vii. Bail before the trial court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV