

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.264 OF 2021

BHARAT S/O LALSING PATIL
VERSUS
THE STATE OF MAHARASHTRA

.....
Mr. A. L. Kanade, Advocate for the applicant.
Mr. A. M. Phule, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 19th March, 2021

ORDER :-

1. Present applicant has been arrested on 15.01.2019 by Jamner Police Station, Dist. Jalgaon for the offences punishable under Sections 302, 201 read with 34 of Indian Penal Code. This is the third bail application filed by the applicant after charge-sheet under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. A. L. Kanade for the applicant and learned APP Mr. A. M. Phule for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the applicant is innocent and has been falsely implicated by the relatives of the deceased. Deceased was the wife of present applicant, however, there was no intention or *mens rea* for him to commit the offence. The case is based on circumstantial evidence. Even the son of the present applicant has given statement that he came to know about the murder of

his mother after reading it in the newspaper. The second son of the present applicant – Namit has also stated that he is residing at Buldhana for education purpose and, therefore, it is also cleared that he was not present at the spot when the alleged incident had taken place. However, it appears that said Namit was put under custody of his aunt i.e. relative of the deceased and, therefore, when his statement under Section 164 of the Code of Criminal Procedure was recorded, he has spoken something against the present applicant. The statement of one Vipul Patil would show that the present applicant had taken the deceased to various hospitals for treatment before she was finally declared as dead. This shows that he had the intention to save her life. Only on the basis of other statements, a suspicion has been raised, but it cannot take the place of proof. Now, the investigation is over and charge-sheet is filed, however, the trial is pending. Though the learned Additional Sessions Judge, Jalgaon has declared the schedule for recording of the evidence of the prosecution case, yet, taking into consideration once again the position of lock-down, the applicant would be kept behind bar. The learned Advocate, therefore, strongly canvassed for releasing the applicant on bail.

4. Per contra, the learned APP strongly opposed the application and submitted that there is absolutely no change in the circumstance. The

applicant had withdrawn his earlier applications when disinclination was shown by this Court to grant any relief to him. There is strong evidence against the present applicant. Applicant and the deceased were the only persons in the house at that time and the death of deceased is due to throttling. He has then tried to cause the evidence disappeared and, therefore, he does not deserve any kind of sympathy.

5. At the outset, it is to be noted that the FIR came to be lodged on 14.01.2019 in respect of the death of Rakhi @ Vidya Bharat Patil, which took place on 13.01.2019. After the investigation was over, charge-sheet came to be filed on 08.04.2019. Thereafter, the applicant had approached this Court by filing Bail Application No.1140 of 2019 and it was disposed of as withdrawn on 14.11.2019, which is definitely after the disinclination was shown by this Court. Thereafter, another attempt was made by the present applicant by filing Bail Application No.1036 of 2020, which was also withdrawn by him on 12.10.2020. The record indicates that after framing of charge, programme was scheduled for examination of prosecution witnesses from 23.03.2020 to 27.03.2020, however, nationwide lock-down was declared on 22.03.2020 and the work of recording of evidence in the trial Courts got hampered. The under trials were not produced from the jail. It appears that the next programme was fixed from 15.02.2021 to 18.02.2021. That means, the

concerned Judge is taking efforts to have expeditious trial, however, it depends upon the situation. That will not entitle the applicant to be released on bail. When, in fact, there is no change in the circumstance except progress of the trial, it cannot be considered as a good ground taking into consideration the pandemic situation. At the same time, we are also required to consider the evidence that is collected against the present applicant. There are witnesses, who have stated about the relationship between the deceased and the applicant. Applicant is the husband of the deceased. Deceased was a Government Pleader. That means, she was not an ordinary lady and her death has been caused due to throttling. There were injury marks on her face. Now, taking into consideration the relationship between the parties and the fact that the applicant was residing with the deceased at the relevant time, these circumstances disentitles him from being released on bail. Hence, the application stands rejected. However, there are general directions issued by this Court to give priority to the cases of under trial prisoners, so also the assurance is given in the order passed by the learned Additional Sessions Judge that he would expedite the trial, therefore, there is no necessity to make it time bound.

[SMT. VIBHA KANKANWADI, J.]

scm