

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.297 OF 2021

Shantabai w/o Ramchandra @ Ramji
Satpute = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr. VD Sapkal, Sr. Counsel i/by Mr.RP Bhumkar,
Advocate for Applicant;

Mr.DR Kale, Public Prosecutor for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 20/04/2021

PRONOUNCED ON : 29/04/2021

PER COURT :-

1. Present applicant came to be arrested on 23.12.2020 in connection with CR No.474/2017 dated 30.12.2017 for the offences punishable under Sections 302 and 201 of IPC. She has filed the present application under Section 439 of Cr.P.C.

2. Heard Shri VD Sapkal, learned Sr. Counsel i/by Advocate R.P. Bhumkar, learned Advocate for applicant and learned Public Prosecutor Shri DR Kale for Respondent-State.

3. It has been submitted by learned Sr.Counsel that investigation is complete and charge sheet has been filed vide RCC No.12/2021.

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Therefore, physical custody of the applicant is not required for the purpose of investigation. Further, a point that is required to be considered is that the offence came to be registered on 30.12.2017 and since then it was under investigation. The Investigating Officer could not come to a conclusion and surprisingly arrested the present applicant on 23.12.2020. It appears to be only on the basis of the circumstance. The deceased was husband of the present applicant and it appears that she was found to be with the deceased at the relevant time and, therefore, she has been arrested. If we consider the FIR, which is lodged by Police Inspector – Suresh Sapkale, then attached to Tophkhana police station, District Ahmednagar, it was revealed that information about accidental death, registered with Shevgaon police station, vide AD No.74/2013, was with the informant. It was stated in the same that deceased Ramchandra @ Ramaji Satpute was found dead due to bullet injuries from the pistol and the pistol and magazine was found on the mattress. It was stated that he was found dead around 1.30 am on 8.9.2013. Post mortem report gives cause of death as "shock and hemorrhage due to fire-arm injury to heart and lungs". In the said inquiry of accidental death, statement of the present applicant was recorded wherein she had categorically stated that, at night time, the deceased was under the influence of liquor and he was cleaning his pistol. The said pistol was given by the applicant to him by taking it out from the cupboard. The deceased had put

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trigger, but there was no fire. Therefore, he had taken out the magazine out of the pistol and again put trigger, still there was no fire. Even the applicant had tried by putting the trigger, still there was no fire. She gave the pistol back to the deceased, which the deceased had put on his lap. 2-3 minutes thereafter, suddenly there was voice of fire and the deceased shouted. It was then found that he had sustained two fire injuries. It may be due to the mechanical defect of the fire-arm. Now, if we consider the report of ballistics expert, possibility of mechanical defect has not been ruled out. But, only a conclusion has been drawn that the distance between the lap and the chest could not have been 2.5 ft., which was the opinion of the ballistics expert that possibility is that the bullets, which were found, might have been shot from a distance of 2.5 ft. Only on this circumstance, he lodged the report on 20.12.2017. When everything was with the police; yet they had not arrested the applicant at any earlier point of time. Now, when physical custody of the applicant is not at all required, we also require to take into consideration the other evidence on record, which shows that the deceased had illicit relations with 2-3 ladies. Even a lady, having illicit relations with the deceased, had given birth to a son from the deceased and the deceased had given his name to the child. Now, the statement of said lady would show that she had not experienced any kind of jealous from the applicant nor it was conveyed to her by the deceased at any point of

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time. Another lady, with whom the deceased had illicit relations, she was given a house by the deceased to the illicit son still the applicant had not taken any kind of objection. The deceased was addicted to bad vices. In respect of this fact, the informant has reached to the conclusion that due to jealous, the applicant might have committed the said offence. This conclusion by the informant is based on his own imagination, which cannot take place of proof because there is nothing on record in the charge sheet which will show that the applicant was jealous of anybody or had done any such act with those ladies, so that the deceased could be put to any such circumstance, which would be inconvenient to him. Even the statement of driver of the deceased, who had brought him at home before he expired, will show that there was no grudge at any point of time in the mind of the applicant against the deceased. When there was absolutely no intention in the mind of the applicant to commit any such offence and the evidence on record does not rule out the possibility of accidental death, there is no necessity to keep the applicant behind the bars. The learned Sr. Counsel strongly canvassed for releasing the applicant on bail.

4. Per contra, learned Public Prosecutor Shri Kale strongly opposed the application and submitted that though the FIR was lodged on 30.12.2017; yet the circumstances and the evidence that is collected would show that it was only the

applicant, who was in the said room at the relevant time. When the ballistics expert report shows that the bullets would have been shot from a distance of 2.5 ft., but, if the story, which could have been within the knowledge of the applicant, showed that the distance between the lap and the chest would be at the most 1 ft. and that too, two rounds were supposed to be fired, taking into consideration two bullets injuries, yet only one shell has been found from the spot and second shell has not been found. Therefore, it amounts to custodial death of the deceased, which the applicant will have to explain. The evidence on record definitely would be sufficient to prove the case of the prosecution against the applicant beyond reasonable doubt. Hence, the applicant is not entitled to be released on bail.

5. At the outset, it is to be noted from the entire contents of the charge sheet that though accidental death was filed on 8.9.2013, for about four years, it appears that the inquiry under Section 174 of Cr.P.C. was going on. Thereafter the FIR came to be lodged on 30.12.2017 against the present applicant. But, for the reasons known to the police, especially the Investigating Officer, the applicant was not arrested till 23.12.2020. The applicant was never shown as absconding and there was no attempt on the part of the police to file charge sheet. In fact, perusal of the FIR would show that the informant had already referred to ballistics report. That means almost entire

piece of evidence was collected when the FIR was lodged. The question, therefore, arises as to how and why, it has been taken so much long time for the police to arrest the accused. This ground itself is sufficient to come to a conclusion that further physical custody of the applicant is not required at all.

. Further, it has to be noted from the statements of the witnesses, especially the ladies, with whom the deceased had illicit relations, which would show that though the deceased had illicit relations with them, the deceased used to put his name to the issues those were there to him from these ladies and then he used to give certain immovable property or cash to those ladies for their survival. From their statements, it appears that there was no such jealous feeling and consequence of any acts by the applicant had affected their relations with the deceased. The legitimate children of the deceased had also not expressed any doubt over the acts of the present applicant nor they have stated or noted any such behavior of the applicant against the deceased either on the day of the incident or in the recent past. Then question arises as to how and on what basis the informant has come to the conclusion that the applicant had fed up with the spending of enormous amount by the deceased on his vices, which led her to commit the murder. Though we are at the very much *prima facie* stage; yet observation can be made that there is absolutely no evidence in the entire charge sheet which would support this

conclusion by the informant.

6. Now, turning towards the ballistics expert report and the post mortem report, it can be seen that the post mortem report shows that there were two fire injuries. According to the ballistics expert, two rounds cannot be fired at the same time from a pistol. On the basis of the experiment, it was concluded that the bullets those were shot on the deceased might have been from a distance of 2.5 ft. This conclusion will have to be proved by the prosecution at the time of final hearing of the matter.

7. Section 293 of Cr.P.C. deals with reports of certain Government Scientific Expert. Sub-section (1) provides that – Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code. Sub-section (4) of said Section gives a list of Government Scientific Experts to whom the section applies. Sub-section 4(e) mentions the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory. Here, in this case, three reports in respect of the examination of fire-arm have been given by the Assistant Director to Government (Ballistics) Forensic Science

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Laboratory, Mumbai. So, even if the said authority can be said to have been covered under Section 293(1) of Cr.P.C. The wording used in the section is, "that the report may be used as evidence". It is not "shall" and, therefore, it cannot be taken as conclusive evidence. What has been expressed in the report is the probability based upon the scientific knowledge the concerned authority has. Therefore, only for the said piece of evidence against the applicant, with the aforesaid circumstances in respect of the investigation and the material that is available, the applicant need not be kept behind the bars. She deserves to be released on bail. Hence, following order, -

ORDER

i. The Bail Application stands allowed.

ii. The applicant be released on bail in connection with CR No.474/2017 dated 30.12.2017 for the offences punishable under Sections 302 and 201 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.

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

v. Bail before the trial court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV