

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.440 OF 2021
WITH
CRIMINAL APPLICATION NO.1032 OF 2021

Hanifa w/o Shakil Shaikh = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr.Sachin S. Shinde, Advocate for Applicant;

Mr.SJ Salunke, Advocate to assist APP;

Mr.AM Phule, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 4th May, 2021.

PER COURT :-

1. Criminal Application No.1032/2021 moved to assist APP is allowed and disposed of.

2. Present applicant, who is 60 years old lady, came to be arrested in connection with CR No. 58/2021 registered with Majalgaon Rural police station, Tq. Majalgaon, District Beed, for the offence punishable under Section 302 read with 34 of IPC. Present application has been filed under Section 439 of Cr.P.C.

3. Heard Shri Sachin Shinde, learned Advocate for the applicant; Shri AM Phule, learned APP for Respondent-State, assisted by learned Advocate Shri SJ Salunke for original informant. In order to cut short, it can be stated that both of them have made submissions in support of their respective contentions.

4. Perusal of the FIR, lodged by daughter-in-law of present applicant, would show that she is making allegations against mother-in-law; brother-in-law and sister-in-law (brother-in-law's wife). Informant — Akhila Irshad Shaikh, says that father-in-law used to reside with her husband, herself and their four children. However, mother-in-law, brother-in-law and sister-in-law used to reside separately. It is stated that there was dispute between the father-in-law and mother-in-law since last about ten years. Since informant's marriage, she was kept separately by the mother-in-law, but with informant's husband. It has been further contended that father-in-law has given entire property in the name of mother-in-law and both the sons. However, since last three months, mother-in-law was insisting informant's husband that he should give all the property in her name. It is then contended that when the dispute got intensified, there was settlement. A bond was executed, in which certain portion of the house, was given in the name of husband of the informant. It is then stated that, in that portion, which was abutting the road, he was running a mobile shop in profit; which was not liked by the accused persons. On that count also, the dispute started. The husband of the informant took loan and started repairing work in the shop; however, the present applicant and brother-in-law used to give threats to kill to the husband of the informant and the informant, if he goes ahead with construction work and then it is stated that for that purpose, the complaint was lodged with the police. The informant then says that her husband was present in the shop on 8.3.2021. All the accused persons were abusing since 5.00 pm.

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The mother-in-law went towards the shop at about 6.00 pm. The mother-in-law and brother-in-law of the informant were giving abuses. The brother-in-law rushed towards the informant to assault her, but her husband intervened. In the meantime, the brother-in-law asked his wife to bring a knife. The present applicant caught hold of the hands of husband of the informant. The sister-in-law brought the knife and gave it to brother, who had then stabbed the knife in the stomach of husband of the informant, virtually taking out the intestines of the stomach. The informant and her father-in-law called brother of the informant and then they made arrangement to take the husband of the informant to Majalgaon hospital, where he was declared dead. The informant has then lodged the report.

4. Taking into consideration the contents of the FIR, it can be seen that the role attributed to the present applicant is that, she had caught hold of the hands of the deceased – Irshad and thereafter the brother-in-law of the informant had inflicted the blows by the knife in the stomach. It is to be noted that Irshad is stated to be 32 years old person, whereas the present applicant is sixty years old lady. The background is of about ten years disputes between the present applicant and her husband; yet it is to be noted that since the marriage of the informant with deceased Irshad, it is stated that the present applicant had kept them away from her. Under such circumstance, whether there could have been such intention in the mind of real mother to commit murder of the son is a question. Though, the learned APP submits that because she had facilitated her another son Arshad, Arshad could give blows of the knife and, therefore, she is actively involved in the offence,

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dis-entitling to be released on her bail; yet it is to be noted that when according to the informant, Arshad had shouted his wife to bring the knife, they could have gathered the idea as to for what purpose, the knife has been demanded. How there could not have been resistance by the others, especially deceased Irshad, when presumably, he would be strong than the mother. Why he could not have given a jerk to the present applicant and tried to flee away is also a question. As per the FIR, it is not the prosecution story that Arshad was already holding a knife in his hand. When it is alleged that it was fetched with the help of wife of Arshad, it could have taken sometime to bring the knife. Under such circumstance, taking into consideration the applicant, being an old lady, and she is not the person, who had given the blow, 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.58/2021 registered with Majalgaon (Rural) police station, District Beed, for the offence punishable under Section 302 read with 34 of IPC, on PR bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- 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 cooperate with the Investigating Officer and remain present as and when needed.

v. 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.

vi. Bail before the Sessions Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV