

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 BAIL APPLICATION NO.587 OF 2021

**AJAY MIRILAL KALE
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Deshpande Chaitanya C
APP for Respondents/State : Mr. G.O. Wattamwar
...

**CORAM : M.G. SEWLIKAR, J.
DATE : 21st December, 2021**

PC.:-

Heard learned counsel Shri Deshpande and Shri G.O. Wattamwar
learned APP for the State.

2. It is the prosecution case that applicant is the husband of the informant. Their marriage was performed two years prior to the incident. They had a daughter of 3 days old. Applicant used to accuse the informant of infidelity. On 9th July, 2020, the applicant denied the paternity of the female child and assaulted the child on head. At that time child was sleeping in a sling. Female child wept for some time and then became quiet. She was immediately shifted to the hospital where on examination she was declared dead. Accordingly, FIR was lodged on 09.07.2020 on the basis of this FIR offence under Section 302, 323, 504 of the I.P.C. came to be registered vide

Crime No.393/2020 with Newasa Police Station, District Ahmednagar.

3. Learned counsel Shri Deshpande submits that applicant is not the author of the crime. He submits that informant had picked up the child and suddenly she felt giddiness on account of which child was released from her grip and fell on the floor and sustained these injuries. He submitted that the in the statement recorded under Section 164 of the Cr.P.C. the informant stated that the female child accidentally fell down and died. He submits that whereabouts of the informant are not known. Mother of the applicant has also given similar statement. He submitted that stone was small which can be accommodated in a palm. With such a small stone fracture cannot be caused. He submitted that incident took place because of accidental fall.

4. Learned APP Shri Wattamwar submits that applicant always doubted chastity of the informant. On the day of the incident, he assaulted the deceased by means of a stone. *Post mortem* report shows that she had two fractures. He submits that such severe injuries cannot be caused because of a fall. He submits that mother of the applicant has also given a statement to the effect that applicant had assaulted the child with a stone. He submits that there are statements of eye witnesses indicating that applicant himself had assaulted the deceased and caused her death. Motive of the assault was that applicant doubted chastity of the informant and applicant was under strong

belief that child was not born from him.

5. Perused the charge-sheet. On perusal of the spot panchanama, it is revealed that the sling in which the child was sleeping did not have blood stains. *Post mortem* report shows that the deceased was stained with blood on right side, blood was oozing from right nostril. In these circumstances, blood stain ought to have been there on the sling. It further appears from *post mortem* report that the deceased had two contusions one over lateral 2/3rd of left of eye of size 2 x 054 millimeter. Another injury was contusion on head on both side of fronto temporo parietal region. If it is accepted for the sake of arguments applicant had assaulted the deceased by stone, in that case only one injury was possible. Her *post mortem* report shows that she had two injuries as discussed above. Charge-sheet is filed. Mother of the deceased has given a statement contrary to her FIR. She has stated that the child accidentally fell down when she was holding it. As contended by the applicant her whereabouts are not known. Mother of the information has also given a statement under Section 164 of the Cr.P.C. in tune with the informant. Therefore, the possibility of the applicant hitting the deceased by some becomes remote. Having regard to these circumstances, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

I) Application is allowed.

- II) Applicant be released on PR bond of Rs.50,000/- with one solvent surety in the like amount, in connection with Crime No.393 of 2020 under Section 302, 323, 504 of the I.P.C. registered with Newasa Police Station, District Ahmednagar.
- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]