

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

918 BAIL APPLICATION NO.789 OF 2021

**YASHODA W/O. RAGHUNATH GHONGDE
VERSUS
THE STATE OF MAHARASHTRA**

Shri. R. V. Gore, Advocate for the applicant
Smt. P. V. Diggikar, APP for the respondent/State

CORAM : M. G. SEWLIKAR, J.

DATED : 13th OCTOBER, 2021

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with CR No. 50 of 2021 registered with M.I.D.C., Paithan Police Station, Tal. Paithan, District Aurangabad under Sections 302, 201, 34, 120B of the Indian Penal Code.

2. Prosecution case in brief is that applicant is the wife of the deceased. Accused No. 2 is the cousin of the deceased. Informant is the sister-in-law of the deceased (wife of real brother of the deceased). It is informed that

husband of the informant is no more.

3. It is alleged in the FIR that while ploughing the field, grand daughter of the informant noticed some bones. She informed her mother (informant). On digging further they found a skull. On the basis of the clothes on the skeleton, the deceased was identified by the informant. She reported the matter to the police. Police took up the investigation recorded statements of the witnesses. Applicant was also interrogated. Memorandum statement of the applicant and brother of the deceased were recorded and it was revealed that applicant and accused No. 2 committed murder of the deceased and the dead body was buried in the field of the informant. Applicant and accused No. 2 accordingly came to be arrested. After completion of investigation charge-sheet came to be filed. This is the first application post charge-sheet.

4. Heard Shri. Gore, learned counsel for the applicant and Smt. Diggikar, learned APP for the

respondent/State

5. Shri. Gore, learned counsel submits that the applicant is the wife of the deceased. The deceased was religious minded person and he is used to be away from village for 3-4 months at a stretch. He would come back after 3-4 months. Applicant did not lodge any report for this very reason only. He further submits that there is nothing on record to show that the bones were of the deceased. The bones were sent for DNA analysis but still the report is awaited.

6. Learned APP Smt. Diggikar submits that applicant and accused No.2 have admitted that they killed the deceased and buried his dead body in the field of the informant. She submits that report of DNA is yet not received. Considering the evidence against the applicant in such serious cases applicant should not be released on bail.

7. As stated earlier charge-sheet is filed. Except the

memorandum statement to the effect that they killed the deceased and buried the dead body in the field of the informant, prosecution could not collect any other evidence. This confessional statement is inadmissible in evidence. DNA report is still awaited. Therefore, at this stage even after filing of charge-sheet it is not known whether the bones were of the deceased. Therefore, there is no identification of the dead body to be of the deceased. In this view of the matter, I am inclined to release the applicant on bail. Hence the order.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 35,000/- (Rupees Thirty Five Thousand only) with one solvent surety in the like amount in connection with CR No. 50 of 2021 under Sections 302, 201, 34, 120B of the Indian Penal Code registered with M.I.D.C., Paithan Police Station, Tal. Paithan, District Aurangabad.

3. Application is disposed of.

4. It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp