

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1322 OF 2020

Shivaji s/o Manik Lale,
Age 37 years, Occupation Labour Work,
R/o Nitoor Tq. Nilanga Dist. Latur. **...Applicant**

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Shirur Anantpal
District Latur. **...Respondent**

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Advocate for Applicant : Mr. S. K. Shaikh.
APP for Respondent-State : Mr. M. M. Nerlekar.
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 16-03-2021.

ORDER :

1. Applicant has been arrested in connection with Crime No.117 of 2019, registered with Shirur Anantpal Police Station District Latur for the offence punishable under Section 302 of Indian Penal Code. He has filed present application under Section 439 of Code of Criminal Procedure.
2. Heard learned Advocate Mr. S. K. Shaikh for applicant and learned Additional Public Prosecutor Mr. M. M. Nerlekar.

3. It has been vehemently submitted on behalf of the applicant that the informant is the wife of the applicant, and it is alleged that, the present applicant has killed their daughter for no good reason. In fact, it has been suppressed that there were no good relations between the husband and wife and the wife had hardly cohabited with him for four to five months, and it is stated that during that time she became pregnant. The present applicant has been falsely implicated as it can be seen from the contents of the First Information Report that the informant herself was not present in the house, yet she has levelled allegations against the applicant. There is no material to show connection between the alleged murder and the present applicant. There is every possibility that the said Act of murder might have been committed by the informant herself. The conduct of the informant is required to be considered. Even during the subsistence of her first marriage she had contracted the second marriage with the applicant. The further physical custody of the applicant is not required and he is ready to abide by the terms of the bail.

4. Per contra, the learned Additional Public Prosecutor strongly opposed the application and submitted that there is ample evidence

against the present applicant. The informant who is the wife of the applicant has specifically stated as to which acts of harassment she suffered and how the applicant used to behave with the child. Now for the sake of getting bail, the applicant is making any kind of allegations. The post mortem report would show that it is a murder. Why the mother would commit murder of the child when it was her first child. Applicant does not deserve any kind of sympathy. Perusal of the First Information Report lodged by the wife of the present applicant would show that she got married to the applicant in 2017. She states that her husband i.e. applicant used to assault her under the influence of liquor. She got pregnant four to five months after the marriage, but as she was harassed by him, she went to her parents house for delivery. Even after the delivery, she was with her parents about nine months. Only 15 days prior to the incident she was sent back by the relatives after persuasion. She has stated that the child used to cry oftenly as she was not acquainted with the persons in her matrimonial home. Applicant used to get annoyed due to the crying nature of the child and on that count he used to scold informant. He used to get so angry with the child that once he had assaulted the child on its face and nose, and once he had taken bite of her lips causing bleeding injury. At

about 05.00 p.m. on 01-08-2019, the child was crying and, therefore, the informant was pacifying her. In the meantime, the present applicant came and asked the informant to give the child to him, and told that he would make that child sleep on cot. He took the child in his hand and kept it on the cot. It was told by him that the informant should not come near the child as he would try to keep her quite. Informant was then standing at the door. The informant specifically states that while pretending the child to make sleep, the present applicant had pressed her neck that is strangulated her and, therefore, informant snatched the child from his hands. But the daughter was on the verge of death so she went running taking the daughter with her to Dr. Sheukar Hospital. After examining the daughter, the said doctor told her to take daughter to Government Hospital. Villager Isaq Gaste sent her with daughter to Government Hospital on the motorcycle. However, on reaching at the hospital, after examination, the concern doctor declared the daughter of the informant as dead.

5. It is to be noted that the age of the child is only one year. Question then arises as to how a father can be so cruel. In the normal circumstance, the wife will not lodge any such complaint or

First Information Report against the husband. But then when it was the murder of her own child, the mother has then lodged the report. Supporting the First Information Report, there are statements of witnesses and the post mortem report. The post mortem report suggests the cause of death as, "Asphyxia caused by smothering resulting in Cardio Respiratory Arrest." Even the column No.17 shows nine injuries over the body of the deceased. Though some of them are stated to be old but the main cause is throttling. Definitely the mother is a clear eye-witness and nothing to suggest as tried to be painted by the applicant that the informant was not present at the spot. There is absolutely no ground made out to exercise discretion in favour of the applicant. Hence, application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-