

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1140 OF 2020

Shalubai Mahendrasing Girase
Age: 42 Yrs., occu. Household,
R/o Darane, Tq. Shindkheda,
Dist. Dhule. = APPLICANT

VERSUS

The State of Maharashtra
Through the Inspector,
Police Station, Sindkheda,
Tq. Shindkheda, Dist.Dhule. = RESPONDENT

Mr.BR Warma,Advocate for Applicant;
Mr.VM Kagane,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 5th January, 2021.

PER COURT :-

1. Present application has been filed for getting pre-arrest bail by the applicant, who is apprehending her arrest in connection with CR No. 81/2019 dated 30.8.2019 registered with Sindkheda Police Station, District Dhule, for the offences punishable under Sections 302, 307, 323, 504, 506 and 34 of Indian Penal Code.

2. Heard learned Advocate Shri BR Warma for the applicant and learned APP Shri VM Kagane for

Respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the FIR has been lodged against about 11 persons and thereby entire family has been roped in. It appears that initially the offence was registered under Section 307 and other Sections of IPC when the statement of the deceased was recorded in hospital. Perusal of the FIR would show that as regards the present applicant is concerned, it is stated that she is cousin sister-in-law of the deceased and though the applicant is residing at the back lane of the matrimonial house of the deceased, it is stated that she had also come to the house. It is the statement of the informant-deceased that there used to be quarrels between the accused persons and the deceased and they used to assault her. The disputes started at about 12.30 pm on 29.8.2019 when the father-in-law of the deceased told that he already had his lunch in the house of cousin mother-in-law of the deceased. He started abusing her when the deceased uttered that since he has taken the lunch outside, the preparation of food

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made by her would be wasted. It is her say that thereafter, the husband, mother-in-law, brother-in-law, sister-in-law assaulted her and then paternal aunt, cousin brothers, present applicant, cousin sister of the husband of the deceased, came and they also started assaulting her. When the father-in-law told that she should not be left alive, paternal aunt brought kerosene tin and then present applicant caught hold of her and another paternal aunt put kerosene on her person. Cousin sister-in-law ignited the match-stick and set her to fire. She received the burn injuries and then she was admitted to the hospital. Therefore, taking into consideration the role attributed to the present applicant, her physical custody is not required. So also, the investigation is complete and charge sheet has been filed on 19.2.2020.

4. Per contra, the learned APP strongly opposed the application and submitted that the present applicant was absconding and, therefore, she could not be arrested. Specific role has been attributed to the applicant that she had caught hold of the deceased-informant and as she

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facilitated in pouring of kerosene by another lady; igniting the match stick and setting her ablaze, the role played by the present applicant is more. Ultimately, the informant succumbed to the injuries on 30.10.2019. The post-mortem report gives probable cause of death as "complications following burns". The statements of the witnesses would show that the deceased was harassed since marriage by the husband and his family members and, therefore, custodial interrogation of the present applicant is required.

5. At the outset, it is to be noted that though it has not come in the FIR as to when the deceased got married, it has come in the statement of her father – Ratansingh Rajput. He has stated that the deceased got married in March 2012. She has one son. But, it appears that since 2012 till 29.8.2019, there was no complaint of ill-treatment against anybody lodged by her.

6. No doubt, the statement of the informant was recorded on 29.8.2019 and she died on 30.10.2019, under such circumstance, whether the

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said statement can be considered under Section 32 of the Indian Evidence Act, in respect of the offence Section 302 of IPC, which would be considered at the conclusion of the trial. Now, the investigation is complete and charge sheet has been filed. As regards the present applicant is concerned, charge sheet is filed under Section 299 of Cr.P.C. It will not be out of place to mention here that Section 299 of Cr.P.C. does not enable an Investigating officer to file a charge sheet per se, but it is an enabling provision for recording of evidence in absence of an accused if it is proved that the said accused is absconding. Perusal of the charge sheet, which has been filed on record, would show that there is absolutely no evidence that is produced which would indicate that attempts were made to arrest the present applicant and to get her declaration as 'absconding'. The Investigating Officer was called and it was tried to be extracted from him as to how he could file the charge-sheet under Section 299 of Cr.P.C. against the present applicant without producing the proof about her being absconding; he has tried to show certain documents, which according to him, are

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the Station Diary entries. After perusal of those documents, this Court was not absolutely convinced and satisfied with those documents. The present applicant has stated that she is a lady doing household work and she resides in the back lane of the matrimonial home of the informant and this can be also seen from the FIR itself wherein it is stated that she resides in the same lane. Now, the documents, which were brought by the Investigating Officer showed that he had made enquiries with the relatives of the applicant and they did not give proper information about the applicant. Whether, he had intention to say that he had made enquiries with other accused persons, was not clear and that is why this Court formed the opinion that those documents are absolutely not proper and might have been brought just to show this Court that something has been done. Under such circumstance, this Court is of the opinion that though the charge sheet has been filed under Section 299 of Cr.P.C. against the present applicant, there appears to be no proof that she was absconding and that point need not be taken into consideration which would have otherwise disentitled the present applicant from claiming the

discretionary relief.

7. As aforesaid, as regards the role that is attributed to the present applicant is concerned, it is stated that she had caught hold of the deceased and then the deceased was put to fire. The said incident is stated to have taken place inside the house and it has been pointed out by the learned Advocate representing the applicant that the spot panchanama does not show any signs in that respect. What have been recovered from the spot of occurrence are only half-burnt clothes; kerosene tin and one match-stick box. If we peruse the post mortem report, it can be seen that the deceased had sustained 52% of burns. If this is the fact, then how there are no traces of burns at the place is a question. Now, when the investigation is complete, nothing is required to be recovered from the applicant, the applicant deserves to be released on bail. Hence, following order, -

ORDER

i. The Anticipatory Bail Application stands allowed.

ii. In the event of arrest of the

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applicant in connection with CR No.81/2019 dated 30.8.2019 registered with Sindkheda Police Station, District Dhule, for the offences punishable under Sections 302, 307, 323, 504, 506 and 34 of Indian Penal Code, she be released on PR and SB of Rs.15,000/-.

iii. The applicant shall not indulge in any criminal activity nor shall she tamper with the evidence of the prosecution.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV