

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1544 OF 2020

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| 1. Gulab s/o Ghudusab Sayyed | |
| 2. Daulatbi w/o Gulab Sayyed | |
| 3. Shafiq s/o Gulab Sayyed | |
| 4. Sajan @ Sajed s/o Gulab Sayyed | ... Applicants |

Versus

State of Maharashtra	... Respondent
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Mr. K. T. Jamdar, Advocate for applicants.
Mr. N. T. Bhagat, APP for the respondent – State.
Mr. A. I. Deshmukh, Advocate for original informant.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 8th March, 2021

Pronounced on : 18th March, 2021

ORDER :-

1. Present applicants are original accused Nos.2 to 5 who came to be arrested on 23.07.2020 in connection with Crime No.136 of 2020 registered with Malakoli Police Station, district Nanded for the offences punishable under Sections 302, 498(A), 304(B) read with 34 of Indian Penal Code. They have filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. K. T. Jamdar for applicants, learned APP Mr. N. T. Bhagat for respondent – State assisted by Mr. A. I.

Deshmukh for the original informant.

3. It has been vehemently submitted on behalf of applicants that the investigation is over and charge-sheet has been filed before the learned Magistrate, Loha. It would take long time to stand their trial. If we consider the evidence collected against the present applicants, then it can be seen that they are the parents-in-law and brothers-in-law of the deceased. Original accused No.1 is the husband of deceased – Taslim. He is not before this Court. It is stated in the FIR that the present applicants used to harass deceased Taslim by demanding amount of Rs.1,50,000/- for construction of the house and also on the count that she has not begotten any child. In fact, Taslim and accused No.1 got married about two years prior to the FIR. According to the informant, he had supplied one vehicle full of bricks and 12 tin sheets for the construction of the house, but then he says that again the accused persons wanted to erect slab and further construction of the first floor and, therefore, they were demanding amount. Informant who is the father of deceased was informed by his another son-in-law from Sawargaon at about 4.00 p.m. on 18.06.2020 stating that Taslim has expired and, therefore, he should go to Limboti. When the informant, his wife and relatives went around 5.30 p.m. and saw that Taslim had expired and her legs were tied with the piece of cloth and there were

ligature marks, it is stated that she was strangled. The postmortem report states about the strangulation, however, it is to be noted that the present applicants used to stay separately from deceased and her husband. It is also reflected in the 8A extract of the house where her dead body was found. They were residing in the same village, however at a different place. Accused No.1 is residing in Nehru Nagar, Limboti, Taluka Loha, whereas the present applicants were staying in Limboti post Dongargaon, Tuka Loha. The applicants have produced photographs of the two separate houses demonstrating that they were staying separately. The spot panchanama is of the house at Nehru Nagar. It has also come in the statements of witnesses Mehboobi Shabbirmiya Pathan, who is the aunt of deceased – Taslim, Shaikh Feroz Shaikh Sarvar (brother-in-law of deceased), Shardul Dadamiya Pathan (paternal uncle of deceased). All of them have stated that about three months prior to the incident, Taslim and her husband were residing in Nehru Nagar, Limboti. Further, the statement of one Bhagyashri Govind Surnar, who is the neighbour of the deceased, has specifically stated that since last about one year, accused No.1 and his wife Taslim were residing in their house. Another neighbour Manika Kashiram Lavte has also stated the same fact. Therefore, when the alleged murder was committed, the applicants were not residing with the deceased and,

therefore, Section 302 of Indian Penal Code as well as Section 304-B is not attracted against them. Their further physical custody is not required, as nothing is to be recovered from them and, therefore, he canvassed for granting bail to the present applicants.

4. Per contra, learned APP strongly opposed the application and submitted that all the accused persons were residing together and they had harassed and treated deceased with cruelty on the count that she has not fulfilled their demand of money and she was not begotting any child. The postmortem report clearly states about the death of strangulation. There are witnesses to whom the harassment was narrated by the deceased and, therefore, applicants do not deserve any kind of sympathy.

5. As the charge-sheet is filed, it presumes that the further physical custody of the applicants is not required for the purpose of investigation. The evidence that is collected against the present applicants is in the nature of statements of witnesses. The fact that has been submitted on behalf of applicants that the deceased and accused No.1 were residing separately appears to be substantiated by the statements of the witnesses under Section 161 of the Code of Criminal Procedure itself. Therefore, it cannot be said to be a custodial death as regards the present applicants are concerned and, therefore, they deserve to be

released on bail, as their trial would take long time to stand. Hence, the following order :-

ORDER

(1) Applicants viz. (I) Gulab s/o Ghudusab Sayyed, (ii) Daulatbi w/o Gulab Sayyed, (iii) Shafiq s/o Gulab Sayyed and (iv) Sajan @ Sajed s/o Gulab Sayyed, who have been arrested in connection with Crime No.136 of 2020 registered with Malakoli Police Station, district Nanded for the offences punishable under Sections 302, 498(A), 304(B) read with 34 of Indian Penal Code, be released on P. R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.

(2) They shall not tamper with the evidence of the prosecution in any manner.

(3) They shall not indulge in any criminal activity.

(4) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm