

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 BAIL APPLICATION NO.1272 OF 2021

KOMAL DHARMRAJ BHINGARDE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondent – State : Mr. V. M. Kagne

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WITH
CRIMINAL APPLICATION NO.2587 OF 2021
IN BA/1272/2021

DNYANESHWAR LAXMAN THOMBARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. S. S. Gangakhedkar
Advocate for Respondent No.1 – State : Mr. V. M. Kagne
Advocate for Respondent No.2 : Mr. N. S. Ghanekar

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07.12.2021

ORDER :-

. Present application has been filed under Section 439 of the Code of Criminal Procedure.

2. The applicant has been arrested in connection with Crime No.978 of 2020 registered with Newasa Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 341, 141, 143, 147, 148, 114,

120(B), 323, 504, 506 of Indian Penal Code.

3. After giving the prosecution story, it has been submitted on behalf of the applicant that the charge-sheet is already filed and some of the co-accused have been released on bail. The role of the co-accused, who have been released on bail was that they were catching hold of the deceased. The role assigned to the present applicant is of instigation only. It is not alleged that she had used any weapon. Now, her further custody is not required for any purpose.

4. Learned APP assisted by learned Advocate Mr. S. S. Gangakhedkar, who has filed application for assist to APP, submitted that because of the instigation given by the present applicant by making a statement “यांचा कालचा माज जिरल्या नाही, यांचा एक एकाचा काटा काढा”, the others have brutally assaulted deceased. The enmity can be seen from the contents of the FIR as well as the statements of witnesses. The present applicant was absconding even after rejection of her anticipatory bail. The FIR came to be lodged on 30.12.2020 and even at the time of filing of charge-sheet, she has been shown to be absconding. She came to be arrested in the month of July, 2021. Therefore, she does not deserve any kind of sympathy.

5. At the outset, it is to be noted from the contents of the FIR as well as the postmortem report which gives the probable cause of death as

“chop wound over head with open fracture of skull laceration of brain” that it was homicidal death. It is also apparent from the contents of the FIR that the relationship between the neighbours was strained in view of the decision of the Civil Court going in favour of the informant.

6. Perusal of the FIR would show that the role assigned to the present applicant is that of instigation. She has not used any weapon, but according to the prosecution, the other persons were carrying weapons in the form of wooden stick and axe. It is stated that accused Bhoopendra had caused the head injury by axe. Though the FIR gives an impression that there was only one injury, the postmortem report gives four surface injuries. But then as per the FIR, accused – Rajendra, Mahesh, Akshay had caused deceased to lie on the ground and then Bhoopendra had given blow of axe. As regards use of stick is concerned, it is stated that after the informant raised his voice, the accused persons left the place with axe as well as wooden stick. Thus, it can be seen that there are no allegations that the present applicant had used any of the weapons those have been recovered under Section 27 of the Indian Evidence Act from accused Bhoopendra.

7. Coming to the fact of absconding, it is definitely a cardinal principle that an accused who is absconding cannot be granted the

discretion of releasing him on bail, however, it is to be noted that initially the applicant appears to have approached various forum for anticipatory bail and then it is stated that it was rejected. The charge-sheet is silent on the point as to how many times there were efforts by the Investigating officer to apprehend her after the rejection of her anticipatory bail. The charge-sheet is also silent as to whether procedure contemplated under Sections 82 and 83 of the Code of Criminal Procedure was taken up before declaring her as absconding. Merely mentioning absconding in charge-sheet will not give right to prosecution to file charge-sheet as contemplated under Section 299 of the Code of Criminal Procedure. Section 299 of the Code of Criminal Procedure is only an enabling provision to the Court to record evidence in absence of an absconding accused, but for that purpose the accused should be declared as absconding by a competent Court, that too after exhausting the procedure that is contemplated under Sections 82 and 83 of the Code of Criminal Procedure. Therefore, it cannot be stated that the applicant was absconding and she has lost her right to claim bail.

8. In view of the role attributed to the present applicant and also the fact that the other co-accused, who had in fact caught hold of the deceased made him to lie on the ground, have been released on bail, the applicant deserves to be released on bail. Hence, the following order :-

ORDER

- 1) Bail Application No.1272 of 2021 stands allowed and disposed .
- 2) Criminal Application No.2587 of 2021 for assist to PP stands allowed and disposed of.
- 2) Applicant – Komal s/o Dharmraj Bhingarde, who has been arrested in connection with Crime No.978 of 2020 registered with Newasa Police Station, Dist. Ahmednagar, for the offences punishable under Sections 302, 341, 141, 143, 147, 148, 114, 120(B), 323, 504, 506 of Indian Penal Code, be released on P .R. of Rs.25,000/- with one surety in the like amount.
- 3) The applicant shall not commit any kind of offence.
- 4) The applicant shall not tamper with the evidence of the prosecution in any manner.
- 5) The applicant should co-operate with investigation.
- 6) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm