

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

BAIL APPLICATION NO.1547 OF 2020

ASHABAI @ RUKHMINBAI W/O MAROTI GADEKAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

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Mr. G.G. Kadam, Advocate for applicants

Mr. S.Y. Mahajan, APP for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29th JANUARY, 2021.

ORDER :

1 Present applicants have been arrested, in connection with Crime No.155/2020 dated 07.07.2020 registered with Umari Police Station, Dist. Nanded, for the offence punishable under Section 302, 120(B), 201 of The Indian Penal Code, 1860. They have filed present application for bail under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. G.G. Kadam for applicants and learned APP Mr. S.Y. Mahajan for respondent.

3 It has been vehemently submitted on behalf of the applicants that the investigation is over and charge sheet has been filed before Judicial

Magistrate First Class, Umari. Both the applicants were arrested on 08.07.2020 and they are in Magisterial Custody since 16.07.2020. The deceased was the husband of applicant No.1. Perusal of the First Information Report would show that the informant is the land owner, with whom deceased was doing labour work since about a month prior to the incident. It would show that the said FIR is against unknown persons. He has stated that on 06.07.2020 deceased Maroti went to him and told that he would go to the agricultural land and he requested informant to take his son i.e. Rameshwar to Bhokar for medical advise. Informant then gave his bullocks to Maroti and told him to plough the land. Informant went to Bhokar along with the son of Maroti and one Gangadhar Laxman Jadhav. He had contacted Maroti at about 2.30 p.m. on his mobile and asked, as to how much amount he should give to son of Maroti. After he gave the amount to the son of deceased, he told the son of deceased that he should have a shopping and go to his house directly. Informant came back to village at 5.30 p.m. and he noticed that his bullocks and Maroti had not returned from the land. It was told by one Datta Gumalwad that his bullocks have stuck near a tree, but Maroti is not accompanying them. Informant went to said place and he found that his bullocks were stuck to the tree in the field of one Ramdas Bandor. He searched for Maroti along with him. He had taken certain persons to search Maroti but then they could found his dead body in the field of one Datta

Shivram Shrikhande.

4 After giving the said story the learned Advocate appearing for the applicants submits that there is no direct evidence against the applicants and the statements of witnesses appeared to be hearsay. The son of the present applicant No.1 and Maroti's father are contending that there was illicit relations between the applicant No.1 and 2 and Maroti had objected to the said relationship, and therefore, the applicants had eliminated Maroti. Except words there is nothing in their statements under Section 161 of Cr.PC. Since the investigation is over the applicants be released on bail.

5 Per contra, the learned APP strongly opposed the application and submitted that the statements of the witnesses would definitely show that all of them were aware about the illicit relationship between the applicant Nos.1 and 2. The family members as well as the respectable persons from the village have stated that Maroti had objected to the illicit relationship, and therefore, even the respectable persons from the village had given understanding to applicant No.1. Even the son of the applicant No.1 is aware about the illicit relationship. There is discovery of shirt having blood stains from accused No.3. The clothes on the person of the deceased, at the time of commission of crime, are also recovered. Further, accused No.3 has also discovered the white colour handkerchief, by which the deceased was

strangled. Though stone was thrown on the deceased for committing his murder; yet, he was strangled, which shows that they had intention not to leave any room for life in deceased. It is a brutal murder, and therefore, they do not deserve to be released on bail.

6 At the outset, it can be seen that now the investigation is over and even the charge sheet is filed, therefore, the further physical custody of the present applicants is not required for the purpose of investigation. Now, as regards the evidence, that has been, collected against the present applicants is concerned, it consists of discovery and statements of witnesses. The FIR is against unknown person. The case is based on circumstantial evidence. The Post Mortem Report would show that the death of Maroti is homicidal in nature. There is no discovery from applicant No.1. The discovery of handkerchief as well as shirt is from accused No.3. Now, as regards the statements of witnesses are concerned, statement of the son of applicant No.1 would show that he was aware about the alleged illicit relationships between the applicant Nos.1 and 2. His age is 14 years and admittedly he is not the eye witness. Same is the case with the father of the deceased. Statements of these two persons have been recorded under Section 161 of Cr.P.C. as well as under Section 164 of Cr.P.C. There is statement of one Hanmant Kanole, who has stated that around 5.00 p.m. he

had seen applicant No.2 and accused No.3 in the field of one Anandrao Jadhav. He had talked with accused No.3. However, he does not say that he had seen those persons going in the field of Shrikhande. Therefore, this witness appears to be not even on the point of last scene together. He was the person, who had given advise to the applicants to give up their illicit relations. The other witnesses also appeared to be on the same point. Further, there is statement of one Bhimrao Rathod, who had seen present applicant No.2 and accused no.3 together. They had gone to the shop of Bhimrao Rathod under the influence of liquor to purchase hen. There are statements of many persons, but all of them appeared to be stating that they had heard about the incident. Therefore, with such evidence the applicants deserve to be released on bail, however, on stringent conditions. Important point is that it appears that the son of the applicant No.1 is a witness in this case and at present it is stated that he is staying at village Ballal. She should not influence him or other witnesses. So also the applicant No.2 is also from the same village, and therefore, it is necessary to restrain them from going into the village and contacting them, in any manner. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicants viz. 1) Ashabai @ Rukhminbai w/o Maroti Gadekar and 2) Govind Bhimrao Jadhav, who have been arrested, in connection with Crime No.155/2020 dated 07.07.2020 registered with Umari Police Station, Dist. Nanded, for the offence punishable under Section 302, 120(B), 201 of The Indian Penal Code, 1860, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand).

3 The applicants shall not tamper with the evidence of the prosecution, in any manner.

4 They shall not indulge in any criminal activity.

5 If they commit any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6 They shall not enter the jurisdiction of entire Bhokar taluka till the conclusion of trial. They should reside elsewhere, and before submission of bail papers, the applicants should give complete address of their proposed residence with their mobile number. So also they should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

7 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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