

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

937 BAIL APPLICATION NO.1400 OF 2021

Shaikh Zareena W/o. Shaikh Nizam
Age: 35 years, Occu.: Household,
R/o. Petkulenagar, Gokunda,
Kinwat, Tq.Kinwat, Dist.Nanded. ..Applicant

VERSUS

The State of Maharashtra
Through New Kinwat Police Station,
Tq.Kinwat, Dist.Nanded. ..Respondent

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Advocate for Applicant : Shri G.R.Syed
APP for Respondent : Shri S.D.Ghayal

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CORAM : M.G.SEWLIKAR, J.

DATE: 30th November, 2021

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.0271 of 2021, registered with Kinwat Police Station, Dist.Nanded, under Sections 302 read with Section 34 of the Indian Penal Code.

2. Applicant is the co-sister of the deceased i.e. wife of elder brother of husband of the deceased. The deceased was second

wife of her husband. First wife is Heena. The deceased has given the dying declaration that she had gone to Kinwat i.e. place of her husband. She found that her husband was living with his first wife. There was some quarrel between the deceased and first wife Heena. Thereupon, all the three i.e. Heena and wives of brothers of the husband of the deceased administered poison to the deceased. According to the deceased it was rat poison. Soon thereafter mother of the deceased came there. She shifted the deceased to local hospital at Gokunda, Tq.Kinwat from there the deceased was shifted to Seva Hospital at Umarkhed, where her dying declaration was recorded on 14th August, 2021.

3. In the dying declaration the deceased has implicated first wife and her two co-sisters. The deceased was not aware of the names of these two co-sisters. On these allegations, Crime No.0271 of 2021 came to be registered under Section 302 read with Section 34 of the Indian Penal Code against the applicant and other accused.

4. Heard Shri G.R.Syed, learned counsel for the applicant and Shri S.D.Ghayal, learned APP for the respondent State.

5. Shri Syed, learned counsel for the applicant submits that learned Sessions Judge released another co-accused by the name of Shaikh Najma Begum Shaikh Rahim. However, the learned Sessions Judge rejected application of the applicant though the role of the present applicant and the accused released on bail is same. He submits that dying declaration is vague. Therefore, applicant be released on bail.

6. Shri Ghayal, learned APP for the respondent-State submits that dying declaration was recorded and role of the applicant is specifically mentioned by the deceased in the dying declaration.

7. On perusal of the Police papers and the dying declaration what emerges is that the dying declaration is vague. It does not specify as to who administered poison to the deceased. It appears from dying declaration that all the three i.e. first wife Heena and the two co-sisters administered poison to the deceased. Moreover, on perusal of the Police papers forwarded by the learned APP, it is seen that some of the witnesses have stated that the deceased herself consumed poison. In view of the nature of the evidence collected by the prosecution and vagueness of dying declaration, I am inclined to release the

applicant on bail. Hence, the order.

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.15,000/- (Rs. Fifteen thousand only) with one solvent surety in the like amount, in connection with Crime No.0271 of 2021, registered with Kinwat Police Station, Dist.Nanded, under Sections 302 read with Section 34 of the Indian Penal Code.
- iii) Bail Application is disposed of.
- iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M.G.SEWLIKAR)
JUDGE

SPT