

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1559 OF 2021

DHURPATABAI W/O. BABURAO GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Nirmal Ramchandra J.
APP for Respondent – State : Mr. A. M. Phule
...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 21.12.2021

Pronounced on : 23.12.2021

ORDER :-

. Present application has been filed under Section 439 of the Code of Criminal Procedure by original accused No.2, who has been arrested in connection with Crime No.215 of 2021 registered with Basmat Police Station, Dist. Hingoli for the offences punishable under Sections 302, 34 of Indian Penal Code and under Sections 4, 25 of the Arms Act.

2. Heard learned Advocate Mr. R. J. Nirmal for the applicant and learned APP Mr. A. M. Phule for the respondent – State. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

3. At the outset, it can be seen that the investigation is over and the charge-sheet has been filed. Under such circumstance, the custody of

the applicant is not required for the purpose of investigation. We are required to consider the material that has been collected against the applicant.

4. First Information Report has been lodged by one Durga Kishan Channe, who is the wife of deceased Kishan Channe. In the nutshell, she wants to say that there was illicit relations between her husband and the present applicant and though they had changed the residences, the present applicant was insisting deceased to maintain the relations. It is then the prosecution story, that has been stated in the FIR itself, that at about 7.30 a.m. on 11.07.2021, deceased and his brother Rama were proceeding towards their business of selling puffed rice. However, in between deceased Kishan went inside the house of the present applicant. He came running after a while followed by accused No.1 – Baburao Gaikwad, who is the husband of the present applicant. Baburao was holding knife in his hand and he stabbed Kishan in his stomach. Rama called their father and Kishan was taken to hospital, where he was declared dead. Perusal of the FIR would shows that as regards the events on the date of the offence is concerned, her information is hearsay. Statement of Rama, who was accompanying with deceased is on the same line, however, it is to be noted that he is not disclosing the presence of present accused at the spot. The distance between house of

present applicant and the spot has not been stated even by Rama. Even if for the sake of argument we accept that there was such illicit relations between the present applicant and deceased, yet the events on the day of incident as told are not *prima facie* stating that whatever was done by Baburao was at the instigation of the present applicant. Another fact which is on record that nothing has been recovered at the instance of the present applicant, but it is at the instance of her husband.

5. Applicant being a lady and also a document is on record which shows that she is suffering from a terminal illness and, therefore, she deserves to be released on bail on stringent conditions. Hence, the following order :-

ORDER

I) Application stands allowed and disposed of.

II) Applicant – Dhurpatabai w/o Baburao Gaikwad, who has been arrested in connection with Crime No.215 of 2021 registered with Basmat Police Station, Dist. Hingoli for the offences punishable under Sections 302, 34 of Indian Penal Code and under Sections 4, 25 of Arms Act, be released on P. R. Bond of Rs.50,000/- with two sureties of Rs.25,000/- each.

III) She shall not tamper with the evidence of the prosecution in any manner.

IV) She shall not indulge in any criminal activity.

V) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm