

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2256 OF 2021**

Nagesh Babaso Patil	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Satyavrat Joshi, for the Applicant.

Mr. H. J. Dedhia, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

**RESERVED ON : 26th November, 2021.
PRONOUNCED ON : 13th December, 2021.**

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 222 of 2020 registered with Kodoli Police Station, District-Kolhapur for the offences punishable under Sections 302, 201 of the Indian Penal Code.

2 It is the case of prosecution that the informant is a Police Patil of village Aawali. Applicant and one Sanjay Ganpat Patil are friends. There was rumour in the village that since last two years the wife of said Sanjay Patil, namely, Savita Sanjay Patil ('deceased' for short) was

having illicit relations with the applicant. Even Sanjay Patil suspected on the character of the deceased and, therefore, there used to be quarrel between them.

3 It is alleged that since the deceased was missing and her body was found, initially the informant lodged the report against the husband of the deceased but later on, during the course of investigation it revealed that it was the applicant who had killed the deceased.

4 Mr.Joshi, learned Counsel for the applicant, submits that initial FIR which was filed on 04/11/2020 by the informant -Police Patil was filed on the ground of suspicion only. Thereafter the informant again recorded her supplementary statement on 05/11/2020 wherein she alleged, on the basis of rumour emanating from the village, that deceased might have been killed by the applicant and accordingly requested to investigate the matter. According to learned Counsel, the only evidence against the applicant is the memorandum panchanama dated 07/11/2020 wherein the applicant purportedly had said that he would show the village-well where the dead body was thrown and as also the clothes he was wearing at the relevant time. But according to learned Counsel, this place was already known which is apparent from

the statement of daughter and son of the deceased dated 07/11/2020 and 05/11/2020 respectively. According to learned Counsel, there is no eye witness to the incident nor it is the case of the prosecution that immediately before death, the applicant was seen in the company of the deceased. Thus for all these reasons, applicant deserves to be enlarged on bail, argued learned Counsel.

5 Mr. Dedhia, learned APP, on the other hand, opposed the submissions by contending that immediately before the incident the applicant had a quarrel with the deceased and thereafter the deceased was not seen and her body was found on the next morning. The learned APP also invited my attention to the statement of prosecution witness, namely, Vailashi Ganpati Patil to substantiate the submissions. Having regard to the nature of offence, the applicant does not deserve to be enlarged on bail, argued learned APP.

6 Perused investigation papers. Admittedly the very first FIR lodged by the village Police Patil against the husband of deceased was on the ground of suspicion. Thereafter, immediately on the next day she again recorded her supplementary statement wherein she expressed her doubt against the applicant, as a person, who might have killed the

deceased.

7 During the course of investigation, it appears that the applicant gave the disclosure statement under Section 27 of the Indian Evidence Act on 07/11/2020 and showed his readiness to show the place where he had thrown dead body and also show the clothes wore by him at the time of incident. However, interestingly the village-well was known to the witnesses and it is apparent from the statements of daughter and son of the deceased dated 07/11/2020 and 05/11/2020 respectively. The statement of Kumari Trupti Sanjay Patil is recorded on 05/11/2020. An answer to question no. 29 shows that on 04/11/2020 the dead body of her mother was found floating in a village-well. Similar is the statement of Shreyas Sanjay Patil, son of the deceased. Both of these witnesses were knowing that village-well from where dead body was recovered. This being so there could not have been any discovery of the dead body from the said village-well at the instance of applicant on 07/11/2020.

8 It may be noted from the FIR dated 04/11/2020 that the husband of deceased had lodged a missing complaint on 03/11/2020 stating therein that his wife was missing from the house from 6-00 p.m.

onwards on 01/11/2020 whereas supplementary statement of the daughter of the deceased, namely, Kumari Trupti Sanjay Patil recorded on 07/11/2020 shows that on 01/11/2020 at about 07-40 p.m. she had seen applicant and the deceased quarreling in an open place around the house. If this was so then the husband of deceased could not have said in his missing complaint that the deceased was missing from 6-00 p.m. of 01/11/2020. Either of the statement is wrong.

9 This brings me to the statement of Vaishali Ganpati Patil relied by the learned APP. According to her, on 01/11/2020 at about 8-00 p.m. Kumari Trupti told her that her parents are not in the house and tried to locate them but the deceased was not seen. Even a search was made in the village but the deceased could not be located. This witness asked the husband of deceased that since the applicant had come to visit the deceased they might have eloped and that he should ascertain and find out whether the applicant was present in his house or not. However, the husband of deceased verified from the villagers and came to know that the applicant was very much present in his house. I do not understand how this statement helps the cause of prosecution. Rather, it shows that the applicant was very much present in his house when the husband of deceased and others were searching for the deceased.

10 Having regard to the material on record, in my considered opinion, the applicant has made out a case for bail. Hence, the following order.

ORDER

(i) Applicant- Nagesh Babaso Patil shall be released on bail in C.R. No. 222 of 2020 registered with Kodoli Police Station, District-Kolhapur on his executing P .R. bond in the sum of Rs. 20,000/- with one or more sureties in like amount.

(ii) The applicant shall not tamper with the prosecution evidence and shall attend the trial regularly.

(iii) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(iv) Bail before the trial Court.

(v) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)