

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.424 OF 2020

Vaishali Marane @ Vaishali Virendra @
Sariputra Gaikwad

.... Applicant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Ms.Saili N. Dhuru, Advocate for Applicant.
- Smt.M.R. Tidke, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st JULY, 2021

(Through video conferencing)

P.C. :

1. The Applicant is seeking her release on bail in connection with C.R.No.432/2019 registered with Lonikand Police Station, Pune, under sections 143, 147, 148, 149, 452, 302 of the Indian Penal Code and under section 4 and 25 of the Arms Act. The Applicant was arrested on 31/07/2019 and since then she is in custody. Investigation is over and the charge-sheet is filed.

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2. Heard Ms.Saili N. Dhuru, learned counsel for the Applicant and Smt.M.R. Tidke, learned APP for the State.
3. The prosecutions case in brief as mentioned in the charge-sheet is that, the Applicant was having some financial transaction with the deceased. The Applicant had allegedly taken Rs.10,000/- from one Rajaram Gulab Salunke. He was asking for that money. He had blocked her phone. Getting fed up, the Applicant had told her nephew Aniket Gaikwad about this. She supplied weapons to them. Aniket with the help of other accused committed murder of the deceased. The other accused were Arvind Jadhav, Abhilash Mule, Mangesh Gawali and a juvenile. They had committed this murder by inflicting blows with sharp weapons.
4. Learned counsel for the Applicant submitted that it is a case based on circumstantial evidence. Each of the circumstance by itself is a weak piece of evidence and they do not form a complete chain of circumstances. She submitted that the motive

alleged is very weak. There is no recovery at the instance of the present Applicant. Third circumstance of the alleged extra-judicial confession is not really an incriminating circumstance because the Applicant has not accepted her own guilt. Therefore it is not a confession at all.

5. Learned APP relied on the same circumstances to contend that each of the circumstance is a strong piece of evidence, and that they form a complete chain.

6. I have considered these submissions and with assistance of both learned counsel, I have perused the charge-sheet.

7. The FIR is lodged by Rajat Rajaram Salunke on 03/05/2019 regarding murder of his father Rajaram Salunke. He has stated that on 02/05/2019, when he returned home, he saw that there was blood outside his house and his father was lying injured inside the house. The first informant had seen a

torn blue piece of cloth on the staircase. Just before the incident, the informant had seen similar shirt on the person of the main accused Aniket, who was to meet the informant at his house. Aniket was known to the Applicant. Therefore informant expressed his suspicion against Aniket and lodged his FIR. Investigation was carried out. The prosecution case as mentioned earlier appears to be that the Applicant had instigated and conspired together with the other accused, including Aniket to commit murder of the deceased. The post-mortem notes show that the deceased had suffered as many as 28 injuries in the nature of chop wounds, incise wounds, stab wounds and cut wounds. Therefore there is no doubt that he was brutally murdered with the help of sharp weapons. The question is as to what is the material against the present Applicant.

8. For that purpose, the prosecution has relied on supplementary statement of the first informant recorded on 09/05/2019. He has stated that in December 2018, the deceased

had given Rs.10,000/- to the Applicant and her husband. They wanted this money to get Aniket released on bail, who was in jail for some offence. The Applicant was known to the informant's family. His supplementary statement further mentions that on one occasion, the Applicant had shown willingness to repay the loan of Rs.10,000/- and she had called the informant to her house to collect it. The deceased had told him to ask the Applicant to bring the money to their house. The Applicant was sister of the wife of the deceased. Therefore they were closely related. Wife of the deceased had expired earlier. It appears that the motive was not strong enough to prove involvement of the Applicant. The Applicant had shown willingness to repay the loan. It is difficult to believe that she would instigate others to commit murder of the deceased, when she had sufficient money to pay him back.

9. The next circumstance is about a statement allegedly given by the Applicant, which was recorded u/s 27 of the Evidence Act. In that statement, she had shown willingness to

point out the place from where she had taken out weapons and had handed them over to the main assailants. She had led the police party to a place from where she was conducting her canteen. However nothing was found pursuant to such memorandum statement. Therefore this statement does not become admissible u/s 27 of the Evidence Act.

10. The last circumstance against the present Applicant is about the alleged extra-judicial confession given by her on 07/08/2019. The witness Manik Kasbe in this regard had not immediately told the police and after more than three months from the incident, this witness had given the statement. Even this statement does not show that it was a clear confession on the part of the Applicant. This witness has stated that on 02/05/2019, at about 08.00 p.m., the Applicant came to his house and told him that Aniket and his friends had taken weapons from her and had committed murder of the deceased Rajaram and that those assailants were absconding. In this case she has not admitted that she had asked the other accused to

commit murder or that she was part of conspiracy to commit murder. This at the most shows that the assailants had taken weapons from her. She was conducting a canteen and therefore those instruments were used by her every day. There is nothing unusual about these weapons. Significantly she has not confessed to being part of the any conspiracy to commit murder. This statement only means that after those articles were taken by the accused, they had committed murder of the deceased using the same. Her statement can be interpreted either way. But this therefore remains a weak piece of evidence. Ultimately, the trial Court will have to examine this part of statement conclusively. At this stage, it appears that the said statement is vague.

11. These are the only circumstances against the present applicant. They are weak in nature. The Applicant is already in custody since 01/07/2019. The investigation is already over. She is a lady. Considering all these aspects, she can be granted bail in this case.

12. Hence, the following order :

ORDER

- (i) In connection with C.R.No.432/2019 registered with Lonikand Police Station, Pune, the Applicant is directed to be released on bail on her furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)