

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

CRIMINAL BAIL APPLICATION NO. 446 OF 2020

Rita @ Magdling Denzil Desoza	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Aniket Vagal, for the applicant.
Smt. A.A. Takalkar, APP for the State/Respondent.

**CORAM: SARANG V. KOTWAL, J.
DATE : 24th FEBRUARY, 2021**

P.C. :

1. The Applicant is seeking her release on bail in connection with C.R.No.341 of 2017 registered with Kondhawa Police Station, Pune, under sections 302, 201, 120B read with Section 34 of the Indian Penal Code. The Applicant was arrested on 27/08/2017 and since then she is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr. Aniket Vagal, learned Counsel for the applicant and Smt. A.A. Takalkar, learned APP for the State.

3. The prosecution case is in respect of commission of murder of one Harpreet Singh. The prosecution case is reflected in the FIR itself. The FIR is lodged on 26/08/2017 by API Yuvraj Nandre. He has stated that he and team were investigating into C.R. No. 749 of 2017, registered at Hadpsar Police Station mainly under section 380, 454, 457 of the Indian Penal Code. In that offence, the applicant and two others were arrested. The investigating Officers were trying to recover the ornaments stolen in that particular offence. During the investigation accused Ajaj Gill told the police officers about the murder that they had committed in the year 2014. According to him, Harpreet Singh was murdered in 2014, at the instance of the present applicant and his dead body was thrown in Katraj Ghat. It is mentioned in the FIR and it is also prosecution case that the applicant was earlier married to her first husband and has two daughters and one son from that marriage. Subsequently she fell in love with the deceased Harpreet Singh. They had one son from their relationship. Harpreet Singh was

addicted to drugs and liquor. He used to harass the applicant mentally and physically. He used to behave indecently with the applicant's daughter. Therefore, getting fed up; the applicant instigated others to kill him. She had paid money to co-accused Sumit and Sarfaraj. They committed murder of the deceased by assaulting him with heavy iron weapon and by use of knife. His dead body was kept in applicant's car and was thrown in a valley in Katraj. On this basis the FIR is lodged.

4. Learned Counsel for the applicant submitted that though the allegations are serious, there is hardly any reliable material against the present applicant in the entire charge-sheet. He submitted that the only piece of evidence against the applicant appears to be extra judicial confession made by the applicant herself to her daughters. He submitted that even that piece of evidence is very weak and the applicant's further custody as an under-trial prisoner is not necessary. He submitted that there is recovery of weapon but that was after three

years from the alleged incident. He submitted that prosecution has not established that the skull recovered from the Katraj ghat at the instance of co accused, was that of the deceased.

5. Learned APP opposed this application. She relied on the extra judicial confessions made by the applicant herself to her daughter. She also relied on the circumstances of recovery of weapon and motive against the present applicant.

6. I have considered these submissions. With the assistance of both the learned Counsel, I have perused the entire charge-sheet. As submitted by the learned Counsel for the applicant, there are three circumstances against the present applicant. First is the extra judicial confession made by the applicant to her daughters. Applicant's daughter Dyna's statement was recorded by the police on 3/9/2017. This statement itself shows that Dyna was called to the Police Station. She was informed

about the entire prosecution case. She was told that the applicant was arrested and thereafter the Dyna's version was recorded. In the same statement she stated that the applicant told her in the year 2014 that she had removed Harpreet Singh from their life forever and that he would not harass them any time thereafter. Dyna understood that the applicant had caused serious harm to the deceased. The applicant again told her after about a month from the first disclosure that she had eliminated Harpreet Singh and his body was disposed of and that applicant's brother Nelson had helped her in cleaning the blood stains. Similar is the statement of applicant's elder daughter Jenifer. Her statement is exactly similar to that of Dyana.

7. As his obvious, these statements are recorded after about three years from the incident. These witnesses had not thrown light on the incident or had not referred to the confession made by their mother to them any time prior to recording of the statement by the police.

Significantly before recording their statements, police themselves had told them the entire story and thereafter they have merely added the story of their mother telling them about the murder.

8. Thus their statements are inherently weak piece of evidence. The circumstances in which their statements are recorded are also doubtful. There was hardly any occasion for the applicant to confess on her own about the story because by that time they were residing separately.

9. The next circumstance is about recovery of iron instrument and knife at the instance of the present applicant on 28/08/2017. This recovery again is after a lapse of more than three years and can hardly be connected with the commission of murder. Moreover, in her statement recorded under section 27 of the Indian Evidence Act, the place where she had concealed the weapons is not mentioned. Therefore, in any case that

again is a weak piece of evidence.

10. The third circumstance is about the statement given by one Nitin Temgire. He was secretary of a residential society. He has stated that on 29/4/2014, he had seen blood stains on stair case of the building and he had told the watchman to clean it as nobody had explained about the same. He had seen those blood stains on 29/4/2014 and his statement was recorded on 07/09/2017. He had not disclosed this fact to anybody for three years. He himself was not suspicious about it. Therefore this circumstance is also very weak.

11. Confession made by the co-accused as is reflected in the FIR was given to the police. Hence it hit by Section 25 of the Evidence Act and, therefore, it is not admissible.

12. Considering all these aspects, there is a very weak case against the present applicant. Therefore, she

deserves to be released on bail. All observations made in this application, are made only for passing of this order. The trial court shall not be influenced by any of these observations and shall decide the trial on its own merit.

13. Hence the following order.

ORDER

- (i) In connection with C.R. No.341 Of 2017 registered with Kodhawa 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) The Application stands disposed of accordingly.
- (iii) With disposal of this application, the interim application also disposed of.

(SARANG V. KOTWAL, J.)