

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 526 OF 2020

Kalinda Swaminath Dhanane	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Nitin Sejpal, for the Applicant.
Ms. Jyoti Lohokare, APP for the Respondent-State.

CORAM : N. J. JAMADAR, J.
DATE : NOVEMBER 27, 2021

P.C.:

1. The applicant who has been arraigned for the offence punishable under section 302 of the Indian Penal Code for having allegedly committed murder of her husband Swaminath (the deceased), has preferred this application for enlarging her on bail.

2. The gravamen of indictment against the applicant can be stated as under:

Smt. Parvatibai Dhanane, the first informant, is the mother of deceased deceased Swaminath. The marriage of deceased and accused was solemnized prior to seven years of the occurrence. The deceased was allegedly given into the vice consuming liquor and drugs. There were frequent quarrels between the accused and deceased.

3. On 12th September, 2019 an altercation had taken place between the accused and deceased. On the following day 13th September, 2019 at about 10.30 p.m again a quarrel broke out between the accused and deceased. The first informant intervened and pacified both of them. After a while, the first informant heard the sound of the gate being closed and, thus, assumed that the duo went to sleep.

4. At about 5 am, the first informant had seen the accused leaving the house. Again at 10 am and 11.45 am the accused left the house and, upon being inquired about deceased, the accused informed that he was sleeping upstairs. Later on, the accused informed that the hands and legs of deceased were feeling cold. Thereupon, the first informant went upstairs and found that the deceased lay motionless with only undergarment on his person. There was a ligature mark on the neck of the deceased. Upon being confronted, the accused confessed that being fed up with daily quarrels and assaults by the deceased, she had strangled the deceased by means of a ribbon. Thus, the informant approached the police and lodged report.

5. Mr. Nitin Sejapal, learned counsel for the applicant/accused

would urge that the entire case is based on the theory of last seen together. However, from the allegations in the first information report, it becomes evident that twice the applicant/accused had left the room in the intervening period. Thus, the theory of last seen together cannot be pressed against the accused. The other circumstance of recovery of ribbon by means of which the accused allegedly strangled the deceased is fraught with infirmities. The said ribbon was allegedly recovered on 16th September, 2019 from the very place of occurrence. Whereas, in the first information report itself, the first informant had asserted that no rope or like material was found there at. In any event, according to Mr. Sejpal, the case would fall within the ambit of Exception 4 to Section 300 of the Penal Code. Since, the applicant/accused is in custody for more than two years and it is very unlikely that the trial can be completed within near future, the applicant/accused deserves to be enlarged on bail.

6. Per contra, the learned APP would urge that there is ample evidence on record to demonstrate the complicity of the accused. Inviting the attention of the Court to the postmortem report and the opinion given by the autopsy surgeon regarding the cause of the death, the learned APP submitted that the accused does not deserve

to be enlarged on bail.

7. Two factors are of importance while considering the prayer of the applicant for bail. One, the nature of the death which the deceased met. Two, the circumstances of the transaction leading to the death of the deceased.

8. In the postmortem report, it is recorded that on external examination a complete horizontal ligature mark was seen over upper one third portion of the neck of the deceased. In addition, there were external injuries on the person of the deceased. The autopsy surgeon has opined that the cause of the death was 'asphyxia due to ligature strangulation'. It can hardly be disputed, even at this stage, that the deceased met an unnatural death.

9. The circumstances of the transaction, especially the place and time of occurrence assume significance. The first informant alleged that there was a quarrel between the accused and the deceased before they went to bed, and on the next morning the deceased was found dead. There is material on record to indicate that the applicant/accused and the deceased were the only inmates in the room on that night, the following morning of which the deceased

was found dead thereat. In view of the provisions contained in section 106 of the Evidence Act, when the death occurs within the four walls of the house, that too at night, where the accused and the deceased were the only inmates, the onus is on the accused to explain the circumstances leading to the death of the deceased. In the case at hand, the first informant alleged that the accused initially had gave untrue explanation.

10. In the aforesaid view of the matter, at this stage, it cannot be said that there is no prima facie material to connect the accused with the crime. The first informant is the prime witness. The apprehension on the part of the prosecution that in the event of the release of the accused on bail, there is a possibility of tampering with evidence and threatening the witnesses, can not be said to be unfounded. I am thus, not inclined to exercise the discretion in favour of the applicant.

11. The application thus deserves to be rejected. However, having regard to the nature of the occurrence, the witnesses to be examined by the prosecution and the period of incarceration of the applicant, it may be expedient in the interest of justice to request the learned Sessions Judge to make an endeavour to conclude the

trial expeditiously.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] The learned Sessions Judge on whose file the Sessions Case No. 59 of 2020 is pending is requested to make an endeavour to complete the trial as expeditiously as possible and preferably within a period of nine months from the date of communication of this order.
- 3] Liberty to the applicant/accused to renew the prayer for bail in the event the trial is not completed within the said period.

(N. J. JAMADAR, J.)