

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

Amk

**INTERIM APPLICATION NO. 1002 OF 2021
IN
CRIMINAL APPEAL NO. 267 OF 2021**

Smt. Santoshidevi Banwarilal Saini]
Age-39 years, R/o. Nisarg Vihar Society,]
Sector 19, Kharghar, Navi Mumbai]
and also at]
Post Chavaram, Tal.- Udaipurvati,]
Dist.- Ziuunzunu, Rajasthan] .. Applicant

Versus

The State of Maharashtra]
Through Sr. PI of Kharghar Police Station,]
Mumbai.] .. Respondent

Mr. Sudeep Pasbola i/b Mr. Sameer P. Nangre for the
Applicant.
Mr. S. S. Hulke, APP for the Respondent-State.

**CORAM : S. S. SHINDE &
SANDIPKUMAR C. MORE, JJ.**

Order reserved on : 21st OCTOBER, 2021.
Order pronounced on : 22nd OCTOBER, 2021.

ORDER

1. The applicant i.e. original accused is seeking her release on bail under this application. During the pendency of this application though the applicant has not sought suspension of sentence imposed upon her by the learned trial Court but in the appeal itself she has prayed so.

2. As per prosecution story, on 04.03.2018 at about 5.00 p.m. the father of the deceased received phone call from the applicant complaining that their daughter had not woken up. When father of the deceased rushed to the house, he saw his daughter lying in the same condition as he saw her when he had left the house. Accordingly, on investigation it was revealed that the applicant being mother of the deceased had, in fact, strangled her own daughter i.e. the deceased to death by means of stole.

3. Learned counsel for the applicant vehemently argued that the learned trial Court erred in convicting the applicant without any eye witness and by relying heavily on Section 106 of the Indian Evidence Act as the deceased and the applicant only were present in the house at the time of incident. According to him, the deceased was in depression and had also made an attempt to commit suicide in the past. Shortly, the learned counsel for the applicant submitted that the applicant is involved in this crime falsely and on mere suspicion.

4. On the contrary, learned APP for the State strongly opposed the application on the ground that the learned trial Court after considering the evidence on record has rightly

convicted the applicant. Further, according to him there was hand-writing of the deceased on record which established the connection of the applicant with the crime.

5. Heard rival submissions and also perused the documents on record. Admittedly, the applicant has been convicted by the learned trial Court for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer R. I. for life and to pay fine of Rs.10,000/-. In default, to suffer S.I. for one year. However, on perusal of record, it appears that the father of the deceased i.e. the husband of the present applicant had been to the house when the alleged incident took place. Moreover, brother of the deceased, namely, Bablu having age of 12 years was also present in the house. As such, we have to consider the applicability of Section 106 of the Indian Evidence Act again. Further, it has come on record that the deceased was under depression and she had already made one attempt of committing suicide. It is significant to note that the present applicant is mother of the deceased and the prosecution case is that she was suspecting her own daughter about having illicit relations. However, it is also important to note that during Covid

period, she was granted temporary bail. Further, the applicant has also deposited the fine amount. Considering these facts and specially keeping in mind that the applicant is lady, she can be released on bail during the pendency of the appeal. Hence, the following order:

ORDER

(i) The substantive sentence of imprisonment imposed on the applicant under the impugned judgment dated 01.02.2021 in Sessions Case No. 398 of 2019 is hereby suspended during the pendency of the appeal.

(ii) The applicant be released on bail on executing P.R. bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or more solvent sureties in the like amount.

(iii) The Interim Application is allowed in the above terms and stands disposed of accordingly.

6. Parties to act on an authenticated copy of this order.

[SANDIPKUMAR C. MORE, J.]

[S. S. SHINDE, J.]

ARJUN
MACHHINDRA
KADAM

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