

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1562 OF 2020

Sarika Sanjay Yadav .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Amit Mane i/b Mr. Balwant V. Salunkhe for the Applicant.

Mr. S.H. Yadav, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 09TH JULY, 2021.

P.C:-

1. The Applicant is charge-sheeted for an offence punishable under Section 363, 302, 201 read with Section 34 of the IPC along with co-accused, who is her husband, and it is informed that he has already been released on bail.

2. The charge-sheet alleges that the Applicant has begotten 3 daughters and, therefore, she kidnapped a young boy, aged 2 years and 4 months, by name Dadu, the son of the Complainant

and drowned him in one *Ranjan* (big earthen pitcher used for storage of water in rural areas) and by conspiring with Accused No.2, threw the body in a well in order to destroy the evidence. The motive attributed in the charge-sheet is that the Applicant was not able to bear a son and, by developing a villainous mind to avenge Punam, her minor son was done to death.

3. With the assistance of learned counsel for the Applicant and learned A.P.P., I have perused the charge-sheet. The charge-sheet discloses that on 08/03/2019, the mother of the deceased, Jyoti Yadav lodged a complaint that at around 12.30 p.m., her young child had stepped out of the house for playing. Since he has not returned and, was not to be found around, a missing complaint was lodged against some unknown persons.

The supplementary statement of the Complainant came to be recorded on 12/03/2019, where she states that on 08/03/2019, her son Shivraj and nephew Yuvraj were taken to Anganwadi by her father-in-law and returned at around 11.30 a.m. Thereafter, the boys went to play in the neighbourhood with Madhura and Kalyani, two daughters of her cousin brother-in-law (Accused No.2), as a routine practice. Yuvraj returned back, but Shivraj continued to play there. Her mother-in-law was also present there, but after sometime, she also returned home without Shivraj. On enquiry with her, it is informed by her mother-in-law that some time ago, she saw Dadu playing outside the house of Sarika, the present Applicant. Upon this, the Complainant

visited the house of Sarika to find that her door was shut and, though she called her, she did not respond. Frantic search for the boy was carried out on that day and the next day.

4. On 10/03/2019, when the father of the Complainant started the machine on the well, the body of the young child was found floating in the well. In the statement of Punam recorded on 08/03/2019, she has stated that when she called Sarika, she did not open the door but her two daughters, aged 2 years and 3 years, who used to play with her son, were playing on the sofa outside the room and the elder daughter told her that her mother and Dadu are inside. She states that this was repeated by her 4 to 5 times and, therefore, she became suspicious. But, this was ignored by her and the search was carried out somewhere else. On the basis of the said statement, a spot panchanama came to be conducted on 08/03/2019 and a map is drawn pursuant thereto, which reflects the house of the Complainant and the accused located in the same precinct.

5. During the investigation, several statements have been recorded and compiled in the charge-sheet, which are based on the statement of the Complainant that Madhura had told her that the deceased and the Applicant were inside the room. That is how the Applicant is charged of eliminating the young child in conspiracy with Accused No.2 and, throwing him in the well located in the precinct, surfaces. This is what is the charge

levelled against the Applicant. The Applicant came to be arrested on 11/03/2019 and, since then, she is incarcerated.

6. On going through the charge-sheet and material compiled therein, *prima facie*, it appears that the case is based on circumstantial evidence. The postmortem report records multiple small bite marks over the body of Dadu and also records degloving of skin. The cause of death is opined to be due to drowning. The injuries in column No.17 in the form of bite marks are postmortem in nature. The lungs are found to be swollen and in column No.20, it records partial decomposition of some of the organs. The time since death is recorded to be between 36 to 48 hours.

7. The motive that has been attributed for elimination of the young boy appears to be jealousy. The Applicant has offered explanation, which has surfaced through a witness that she was changing clothes and, hence, did not open the door, when the Complainant had given a call to her. The charge-sheet does not contain any evidence to the effect that the Applicant, at any point of time prior to this, had created any dispute with the Complainant involving the child. The submission of learned counsel for the Applicant is that the child was playing in the precinct and has proceeded to the well and fell in the well. In a case, where the prosecution relies upon circumstantial evidence, the burden is on the prosecution to establish the link and the link

should be so concretely established that the evidence brought on record shall only point to the accused and to none else. This clinching nature of evidence, *prima facie*, is not to be seen in the charge-sheet. The investigation is complete and the Applicant is incarcerated since 11/03/2019, which is a long period. On account of pandemic, the possibility of the trial being culminating into a verdict shortly, is absolutely overruled. Applicant No.2 has been released on bail and, in such circumstances, there is no reason why the present Applicant should continue to remain behind bar. The Applicant is, therefore, entitled to be released on bail subject to the following conditions.

ORDER

- (a) The Applicant – **Sarika Sanjay Yadav**, shall be released on bail in C.R. No.88 of 2019 registered with Jath Police Station, District Sangli, on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(c) The Applicant shall attend the trial court as and when called for without any default, unless exempted.

8. The Application is allowed in the aforestated terms.

9. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]