

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3080 OF 2021

NITIN MACHINDRA BHOSALE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

INTERIM APPLICATION NO.2787 OF 2021

IN

BAIL APPLICATION NO.3080 OF 2021

SMT.SANTOSHI MISTINGYA KALE)...INTERVENOR

IN THE MATTER BETWEEN

NITIN MACHINDRA BHOSALE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Rupesh Zade, Advocate for the Applicant.

Ms.Pallavi Dabholkar, APP for the Respondent – State.

Mr.Rushikesh Kale h/f. Mr.P.G.Sarda, Advocate for the Intervenor.

CORAM : V. G. BISHT, J.

**RESERVED ON : 7th DECEMBER 2021
PRONOUNCED ON : 17th DECEMBER 2021**

AVK

1/7

P.C. :

1 The interim application of the intervenor is allowed to the extent of assisting the learned APP in the matter and stands disposed off accordingly.

2 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.12 of 2021 registered with Police Station Bhigwan, Pune, for offences punishable under Section 302, 498A, 316, 34 of the Indian Penal Code (IPC).

3 Informant is mother of deceased Sajan Nitin Bhosale. The prosecution alleges that on 8th January 2021, applicant-husband and the family members after beating the deceased by means of fist and kick blows and saying that she should not reside there and should go away, forcibly administered poisonous substance with a view to kill her. The informant, accordingly, lodged the First Information Report (FIR).

4 Mr.Rupesh Zade, learned counsel for the applicant, at the outset, assailed the FIR on the ground of delay. According to the learned counsel the alleged incident took place on 8th January 2021 whereas the FIR came to be lodged on 11th January 2021. The delay is nowhere explained. According to the learned counsel there is no evidence at all to suggest that the applicant had administered poisonous substance to the deceased. Investigation is over and charge-sheet has been filed. Therefore, the applicant deserves to be enlarged on bail.

5 Ms.Pallavi Dabholkar, learned APP, assisted by learned counsel Mr.Rushikesh Kale for the intervenor, on the other hand, invited my attention to the contents of the FIR and also invited my attention to the statement of prosecution witnesses, namely, Malan @ Reshma Shahaji Kale and Manisha Jafan Chavan, who are aunt and cousin of the deceased respectively. There being no merit in the application, the same is liable to be rejected, argued learned APP.

6 Perused the investigation papers. I have also gone through the postmortem report. It appears that the opinion as to the cause of death was reserved till the arrival of report of viscera. No such viscera report is forthcoming.

7 Incidentally, I may note here that though in the FIR it is alleged that on the date of incident she was beaten by all the family members by means of kick and fist blows but no such injuries were noted on the person of the deceased. What was noticed was abrasions over index finger, middle finger and little finger of left leg. These abrasions do not, in any manner, even remotely suggest that the deceased was subjected to beating by means of fist and kick blows by all her in-laws including the applicant-husband.

8 I have also gone through the contents of FIR carefully. It appears that on 8th January 2021, at about 5.00 p.m., the deceased had rang up the informant – mother and had

complained that the applicant-husband and his family members were beating her by means of fist and kick blows and had also brought a bottle of poison and were also saying that they would administer her poison. But this statement alone is not sufficient to infer positively, in absence of any other evidence, that the applicant and his family members had infact administered deceased the poisonous substance.

9 The statement of the prosecution witness, namely, Malan @ Reshma Shahaji Kale shows that the deceased had also told her about the harassment suffered by her at the hands of applicant-husband and in-laws. Even the deceased resided with her for fifteen days and while returning on 6th January 2021 said to her that although she was going with the applicant-husband, but then all would kill her. Similar is the statement of Manisha Jafan Chavan.

10 Having regard to the material on record and the fact that the investigation is over, followed by filing of the charge-

sheet, in my considered opinion, no purpose would be served by keeping the applicant behind the bars. Hence, I pass the following order :

ORDER

- (i) Applicant – Nitin Machindra Bhosale shall be released on bail in Crime No.12 of 2021 registered with Police Station Bhigwan, Pune, on his executing P.R.Bond in the sum of Rs.20,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)