

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.71 OF 2022

SANGEETA W/O KELYA KALE
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. K. G. Shingare, Advocate for applicant.
Mr. A. M. Phule, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25.02.2022

ORDER :-

. The applicant is apprehending her arrest in connection with Crime No.52 of 2018 registered with Jamkhed Police Station, Ahmednagar for the offences punishable under Sections 302, 394, 397, 420 of Indian Penal Code.

2. Heard learned Advocate Mr. K. G. Shingare for the applicant and learned APP Mr. A. M. Phule for the respondent – State.

3. Learned Advocate for the applicant submits that the charge-sheet was already filed in the year 2018. The applicant was shown as absconding. Co-accused Belya Takarya Kale was arrested on 29.03.2018 and, therefore, the case was committed to the Court of Sessions bearing

Sessions Case No.84 of 2019. The case was tried and learned Additional Sessions Judge, Shrigonda, Dist. Ahmednagar has acquitted said Belya Takarya Kale on 01.02.2022. The copy of the judgment has been annexed. Under such circumstance, when the co-accused has been acquitted, there is no question of any discovery or recovery at the hands of the present applicant. The learned Additional Sessions Judge, Shrigonda has rejected the application filed by the present applicant on 07.10.2021 stating that no charge-sheet was filed against the applicant and the acts committed by the applicant is separate. She cannot be released on anticipatory bail. It is a wrong conclusion that has been drawn. The applicant is ready to abide by the terms of the bail and would remain present before the trial Court.

4. Per contra, the learned APP strongly opposed the application and submitted that the applicant was absconding and, therefore, the charge-sheet was filed under Section 299 of the Code of Criminal Procedure. There would be the evidence about the applicant going absconding and, therefore, she does not deserve the relief which is extraordinary in nature.

5. There is no such concept of filing a charge-sheet against one accused only. When the offence is investigated, it will have to be

investigated against all the accused, who are named or whose involvement would be revealed. Further, the investigation under Section 173(8) of the Code of Criminal Procedure would be on the basis of material collected later on. In each and every case there cannot be a further investigation under Section 173(8) of the Code of Criminal Procedure.

6. The fact remains in this case that when Belya Takarya Kale was arrested and the charge-sheet was filed against him, the present applicant has been shown as absconding. It will have to be presumed at this stage that the Courts below would have taken up all the necessary legal procedures before the trial was separated in respect of the arrested accused. Acquittal of co-accused may not *per se* result in the acquittal of the present applicant. The applicant has not definitely produced on record evidence of P.W.4 Manoranjan Jogesh Halder, who was the informant and eye witness. However, if we consider the contents of the judgment, while appreciating the evidence of the informant, he has specifically stated that the present applicant was guiding the co-accused Shrikrushna on phone. It appears that the name of the present applicant was specifically taken by him. His testimony has not been discarded on the count that incident has not been proved. In fact, said Shrikrushna had died due to the injuries caused to him and the concerned Judge has

come to the conclusion that his death is homicidal in nature. It appears that the testimony of the informant did not appeal to the learned Judge on the count that he had not identified the arrested accused. Therefore, there is no question of parity for the present applicant, who has gone absconding. Now, with the acquittal of the co-accused, she is coming forward which can be stated to be ulterior motive. Note of the decision in ***Lavesh Vs. State (NCT of Delhi), [2012 (8) SCC 730]*** will have to be taken into consideration, wherein it has been observed that the extraordinary powers of the Court under Section 438 of the Code of Criminal Procedure cannot be exercised in favour of an absconding accused. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm