

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.363 OF 2022

Yadu @ Yadav S/o Gangaram Sonkamble

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Police-Inspector, Degloor Police Station,
District-Nanded

...RESPONDENTS

...
Mr.G.J. Karne Advocate for Applicant.
Mr.V.S. Badakh, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 28th APRIL, 2022

ORDER :

1. The applicant has been arrested on 16th September 2018 in connection with Crime No.367 of 2018 by Degloor Police Station, District-Nanded for the offence punishable under Sections 302, 304-B, 498-A read with Section 34 of the Indian Penal Code. Applicant has filed present application under Section 439 of the Code of Criminal Procedure.

2. Investigation is complete and charge-sheet was filed on 29th November 2018. It will not be out of place to mention here that the present applicant along with co-accused, has approached this Court by filing Criminal Bail Application No.600 of 2019 and same was rejected by this Court on 24th May 2019. Thereafter the present applicant and co-accused filed Criminal Appeal No.568 of 2020 [@ SLP (Cri.) No.10673/2019] before the Hon'ble Supreme Court challenging the order passed by this Court on 24th May 2019. It is then submitted to the Hon'ble Supreme Court that as regards the present applicant – husband is concerned, the said appeal is not pressed for the time being, and thereafter taking into consideration the matter and the fact that trial has not been commenced, the bail was granted to the co-accused by the Apex Court on 7th September 2020.

3. It is to be noted that there is practically no change in circumstance and it has been tried to be contended that since the trial is not started the applicant be released on bail. It will not be out of place to mention here that in the meantime it appears that present applicant had filed an application Exhibit 54 in the said Sessions Case No.2 of 2019 for releasing him on bail in view of the decision by the High Power Committee. However,

that application came to be rejected by the learned Additional Sessions Judge, Biloli on 24th May 2021. Thereafter the applicant again approached the concerned Court with the same request i.e. for releasing him on bail due to Covid-19 Pandemic situation and he wanted to take advantage of the guidelines of the High Power Committee. But that application was also rejected by the said Court on 20th July 2021. Thereafter, the applicant has not approached the same Court after normalization of the situation and now he has directly come to this Court.

4. When applicant himself had not pressed the application before the Hon'ble Apex Court, then the scope appears to be very limited and secondly, he has not again approached the same Court after normalization of the situation. This Court has already dealt with the evidence that was collected in the charge-sheet when the application was rejected by this Court on 24th May 2019. The said evidence is not in fact required to be revisited and therefore the application in fact deserves to be rejected at this stage itself.

5. However, an opportunity was given to the learned Advocate for the applicant to make submissions and tenor of his

submissions was that the deceased was never harassed by the applicant and it appears to be a case of suicide. Statements of only interested persons have been recorded and he has tried to submit that since the trial has not begun in proper speed, the applicant deserves to be released on bail. In a way, he is also pressing the ground of parity with the co-accused in a sense that allegations are also against the co-accused and those are similar in nature.

6. Learned APP has strongly opposed the application and submitted that taking into consideration the fact that the applicant is the husband and the probable cause of death is "Sudden Cardio – Respiratory Arrest Sec. to Strangulation with Throttling." Further Column No.17 of the postmortem report also shows nail marks. Column No.18 states dislocation of right wrist joint and fracture of thyroid bone. Therefore, it is a clear case of murder and being the husband the applicant was the custodian and the death has taken place in the house of the applicant and therefore it is custodial death. No sympathy is required to be shown to the applicant.

7. As regards the progress in the trial is concerned, the applicant has not produced copy of Roznama. Another fact is that due to Pandemic situation the Court work was affected, and especially in the rural areas where the facility of Video Conferencing was not available, the trials have been affected. Under such circumstance, when it was unprecedented situation, nobody can be allowed to take advantage of that situation. Since, now the things are normalized, though again Covid cases are increasing, there would be progress in the case. Therefore, on that count no concession can be given to the applicant. The probable cause of death and the injuries those have been mentioned in the foregoing paras would show that it is a case of homicidal death and it appears that after throttling a scene was created of hanging. Taking into consideration the injuries those were found, the medical officer has opined that death of deceased was due to strangulation and throttling. *Prima facie* it can be said that it is a custodial death. The statements of witnesses show that the deceased was beaten by the applicant and it is stated by the witnesses that it is in order to get the illegal demands satisfied. The neighbours have also stated that the applicant was beating the deceased.

8. Therefore, taking into consideration all the above said aspects, the Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]

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