

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 ANTICIPATORY BAIL APPLICATION NO.300 OF 2022

AKTARBANU MUNIR SHAIKH (NAME IN FIR - AKTAR MUNIR SHAIKH)
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Dighe Pravin S.
APP for Respondent-State : Mr. V. M. Kagne
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 05-04-2022

ORDER :

1. The applicant is apprehending her arrest in connection with Crime No.34 of 2022, registered with Shrirampur City Police Station, Shrirampur, District Ahmednagar, for the offences punishable under Section 302, 201 r.w.34 of the Indian Penal Code. Accused No.1 is the son of the present applicant.
2. Heard learned Advocate Mr. P. S. Dighe for applicant and learned APP Mr. V. M. Kagne for respondent-State. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.
3. In this case, the FIR is the out come of the order passed by the learned Judicial Magistrate First Class, Shrirampur, under Section 156

(3) of Cr.P.C. in a private complaint that was lodged by the informant. It is not in dispute that the Junaid, son of the informant, expired intervening night of 13-02-2021 to 14-02-2021 and the FIR has been lodged on 12-01-2022 and the private complaint-cum-application was filed by the informant before the learned Magistrate on 07-07-2021. Therefore, there is apparent delay in lodging the said complaint also. Another aspect to be noted is that after the deceased was found in dead condition, one Ravi Gaikwad had given information about the same to the police station which was then registered under Section 174 of Cr.P.C. and inquiry was conducted. In the process of inquiry, inquest panchanama was prepared and then the dead body was sent for post-mortem. The post-mortem has been conducted in between 11.00 a.m. to 12.00 p.m. on 14-02-2021 at Rural Hospital, Shrirampur. There was no injuries in column No.17, 18 and 19, and the cause of death is said to be, "due to asphyxia due to drowning in water." Therefore, per se from the post-mortem report, it cannot be stated that the death is homicidal in nature. Under such circumstances, whether it would attract the ingredients of offence under Section 302 of IPC itself, is a question.

4. Though the informant has tried to connect the alleged incident

on which the son was found dead to an earlier incident that had allegedly taken place on 03-01-2021 and 04-01-2021, the role attributed to the present applicant is in respect of incident allegedly taken place between 09.30 a.m. to 10.00 a.m. on 04-01-2021 only. It is then stated that the applicant and her son had gone to the house of informant, informant called them inside, however both the accused persons were abusing the informant and his family members in filthy language and they were giving threats. Informant does not say that why he had not lodged the report about the said incident, but he says that he gave advice to his son Junaid that he shall not go to Jafrabad where the applicant and her son are residing. According to the informant, Junaid started his routine work from 10-02-2021 and prior to that he was in the house itself. On 13-02-2021 he left home on the ground that he is going to Ahmednagar and return at about 10.00 p.m. After dinner he again went outside but did not return and his dead body was found on the next day morning.

5. The inquiry that was made under Section 174 of Cr.P.C. of which the papers are made available would show that he had expressed suspicion only on accused No.1 and not against the

present applicant. Other family members also stated the same fact. Further, the statements of witnesses have been recorded in the present investigation also. Statement of witness Somnath Dudhal who appear to have lastly spoken with Junaid around 12.35 a.m. on 14-02-2021, states that he had consumed liquor and he might be in a hall which was giving him echo. He states that Junaid was not knowing swimming and he is not suspecting that there is any foul play. Statement of witness shrikrishna Sable is also on the same line and it appears that he was the dear friend of Junaid. They used to talk daily four to five times on phone. He also states that there was conversation between him and Junaid on 13-02-2021 on 13 times and the last call was on 20.58 hours. He also found that Junaid was in drunken condition. Taking into consideration the evidence that has been collected up till now, the physical custody of the applicant is not required for the investigation. She deserves to be protected under Section 438 of Cr.P.C. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) In the event of arrest of the applicant Aktarbanu Munir Shaikh (Name in FIR – Aktar Munir Shaikh), in

connection with Crime No.34 of 2022, registered with Shrirampur City Police Station, Shrirampur, District Ahmednagar, for the offences punishable under Section 302, 201 r.w.34 of the Indian Penal Code, she be released on PR Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

3) Applicant to attend Shrirampur City Police Station, District Ahmednagar, as and when called by the Investigating Officer.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.