

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1686 OF 2021
WITH
CRIMINAL APPLICATION NO.1019 OF 2022

SHAHURAJ @ BABAN VYANKATI BADE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Satej S. Jadhav, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent

Mr. P.G. Tambade, Advocate for assist to APP

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 19th APRIL, 2022

PRONOUNCED ON : 04th MAY, 2022

ORDER :

1 Criminal Application No.1019 of 2022 moved for assist to APP stands allowed and disposed of.

2 The applicant has been arrested on 17.07.2021 in connection with Crime No.128/2019 dated 11.07.2019 registered with Dindrud Police Station, Dist. Beed, for the offence punishable under Section 302 read with

Section 34 of the Indian Penal Code, 1860.

3 Heard learned Advocate Mr. Satej S. Jadhav for the applicant and learned APP Mr. A.M. Phule, well assisted by learned Advocate Mr. P.G. Tambade for the informant.

4 It has been vehemently submitted on behalf of the applicant that the investigation is complete and charge sheet has been filed, therefore, the custodial interrogation of the applicant is not required. First Information Report has been lodged by one Rajebhau Bibhishan Tidke who is the brother of deceased Rahibai Balasaheb Bade. Deceased Rahibai was the sister-in-law (brother's wife) of the present applicant and said Balasaheb i.e. the brother is co-accused. It is alleged that Balasaheb was insisting Rahibai that she should give back the land which was given in her name and even the present applicant was also instigating the brother for the said act. They both had forced Rahibai to lie down and they administered poison to Rahibai. She was taken to hospital, however, she succumbed. The present applicant is in fact residing separately from the brother and there is enmity between them. Why he would have supported the brother with whom he had enmity. Nothing incriminating has been recovered from the present applicant. It is the prosecution story that the incident has been witnessed by two eye witnesses,

however, they are the minor son and daughter of the deceased. Even if we take their statements as it is, they are contrary. The statement of one Dnyanoba Bade indicates that daughter of deceased had stated to him that her mother i.e. deceased had consumed poison and then she had told to father to come to house as early as possible. If this has to be taken into consideration, then, even the accused No.1 was not present at the spot. Another witness says that deceased was assaulted by iron rod on her thigh, but the Postmortem Report column No.17 does not support the said fact. The present applicant had no motive to commit such offence. The applicant is ready to abide by the terms of the bail.

5 The learned APP, well assisted by learned Advocate Mr. P.G. Tambade, strongly opposed the application and submitted that there are eye witnesses to the incident. They are the children of accused No.1. Consistently it has been stated by the witnesses that the accused No.1 used to harass Rahibai on the count that she should give the land in his name. As regards the present applicant is concerned, there is overt act. After the deceased was made to lie and the poisonous substance was tried to be poured in her mouth and she was not consuming it, the present applicant pressed her nose and then after she opened the mouth the said poisonous substance was poured in her mouth. The provisional cause of death states that "Opinion

reserved in a clinically diagnosed and treated case of poisoning”. The stomach wash has been sent for chemical analysis along with the viscera. When there is evidence against the present applicant he cannot be released on bail.

6 Perusal of the First Information Report would show that it has been lodged by Rajebhau Bibhishan Tidke – brother of the deceased. He has categorically stated that his brother-in-law i.e. husband of deceased is addicted to liquor and he used to harass deceased after consuming liquor. About 2½ months prior to the incident accused No.1 had purchased land admeasuring 2½ Acres in the name of Rahibai. However, after some days when there used to be quarrel between deceased and accused No.1, accused No.1 used to insist that deceased should transfer the land in his name. He used to assault her on that count. Informant had tried to persuade them by saying that even if that land is in the name of Rahibai, it belongs to both of them and, therefore, they should not quarrel. Inspite of that the accused No.1 and present applicant used to assault deceased. Nephew of the informant informed at about 8.00 p.m. on 17.07.2019 that the accused persons had administered poison to Rahibai and she has been taken to Government Hospital, Ambajogai. Informant and others went to said hospital. Deceased was taking treatment in Intensive Care Unit, however,

around 12.00 mid night she was declared dead. Datta is the son of accused No.1 and deceased, nephew of present applicant. In his statement under Section 161 he has given details as to what had happened on that day. He is the eye witness and supports the fact that the present applicant was present at the spot when both the accused had administered poison to deceased. There are other witnesses also who are supporting the said statement. There might be some minor contradiction in the statement of daughter of the deceased, however, it cannot be considered at this stage. The other witnesses rather say that when it was the time to take deceased to hospital, accused No.1 was present and he gave the bottle of poison/insecticide and asked those persons to take deceased to hospital and he would join after collecting money. It is, therefore, required to be seen or it would be the part of evidence as to whether the accused No.1 had joined thereafter or not.

7 Another fact to be noted is that accused No.1 came to be arrested on 12.07.2019 itself, however, present applicant was absconding. Charge sheet came to be filed on 02.10.2019 while he was still absconding. The present applicant came to be arrested after about two years and there is absolutely no explanation as to where he was. Possibility of he getting absconding once again cannot be ruled out. In the decision of **Lavesh vs. State (NCT of Delhi), 2012 (8) SCC 730** Hon'ble Supreme Court has stated

that anticipatory bail cannot be granted to a person who has declared absconded. No doubt, in this case, as on today, the applicant has not been declared as absconded by adopting procedure under Section 82 and 83 of the Code of Criminal Procedure, but still same analogy would have been adopted, because there were attempts to arrest all applicants and they were not available at the expected addresses. Extraordinary discretionary relief, therefore, cannot be granted in favour of such person. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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