

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 BAIL APPLICATION NO.443 OF 2022

ANITA WD/O NIMBA PATIL
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Desale Nilesh N.
APP for Respondent-State : Mr. S. B. Narwade
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 26-04-2022

ORDER :

1. The applicant has been arrested on 05-11-2021 by Sindhkheda Police Station, District Dhule, in connection with Crime No.263 of 2021, for the offence punishable under Section 302, 201 of Indian Penal Code. Deceased is the husband of the applicant and it is alleged that the present applicant had illicit relations with accused No.1 and in furtherance of their common intention, they have committed the murder of the husband of the deceased and in order to screen themselves from punishment, they had dumped the dead body in a well.

2. Heard learned Advocate Mr. N. N. Desale for applicant and learned APP Mr. S. B. Narwade 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. The investigation is complete and the charge-sheet has been filed on 02-02-2022. Under such circumstances, the further physical custody of the applicant is not required for the purpose of investigation. It is, therefore, required to be seen as to what kind of evidence has been collected against the applicant.

4. The FIR has been lodged by Police Head Constable Sadesing Indrasing Chavan attached to Shindkheda Police Station and it is against unknown person. It is on the basis of the information received about the dead body found in the well. The inquest panchanama has been carried out and the post-mortem has been got done. The post-mortem report is in respect of that unknown person, that mean, till that date the identity of the deceased was not established. If we consider the post-mortem report, then Column No.17 surface wounds and injuries would disclose that as regards the skull bones are concerned frontal bone and left parietal bone were missing, fractured parts of right temporal, left temporal, occipital and right parietal bones are seen. There were fractured margins of those bones show reddish discoloration with blood

infiltration. Then as regards the facial bones are concerned, it is stated that only some fractured parts of manible seen, rest of facial bones missing, cervical vertebrae was fractured. Some muscles of the right arm were missing and the bone was exposed. But as regards the injury No.4, it is stated that it is post mortem injury and only injury No.1 to 3 are ante mortem. There are some internal injuries those have been noted in Column No.19, but it can be seen that some part of the head was missing. However, the probable cause of death that was given by the Medical Officer is, "death due to head injury and cervical cord injury. Bones were preserved for DNA analysis." It has been then stated that the samples have been sent for DNA analysis and for analysing samples of mother Sumanbai Patil have been taken. There is no doubt that the death of the person in respect of whom the FIR is lodged and whose post mortem was conducted is homicidal in nature. But, then at the same time, the other evidence is also required to be considered as regards identity of the person is concerned.

5. The statement of the brothers of the deceased (though it is not confirmed, yet since their statements are recorded, their relationship is taken on the basis of the prosecution story) has been recorded

under Section 161 of Cr.P.C. as well as Section 164 of Cr.P.C. If we consider the statement of witness Savkar- one of the brothers of deceased, it can be seen that his brother deceased Nimba was 46 years old person and was married to the present applicant. He was having three daughters aged 14, 10 and 2 respectively. Nimba used to drink liquor sometimes. Present applicant had lodged report against husband Nimba on 04-10-2021 with Songir Police Station alleging that under influence of liquor and raising suspicion over her character, she was abused and assaulted. Nimba was called to police station and on the same day it is stated that the present applicant went to her parental house at Javkhede, Taluka Amalner, District Jalgaon, with the third daughter. She had not taken her two elder daughters. Thereafter, the two daughters were taken by present applicant's brother with the permission of Shankar Patil to his house. It is then stated that on 10-10-2021 all the brothers including Nimba gathered in the house of Savkar for discussing Nimba's marital life. At that time Nimba told that his wife is having extra marital affair and he is having suspicion about that. All the other three brothers told him that when you do not have evidence, you should not ill-treat the wife. Nimba accepted suggestion, and therefore, Savkar as well as Shankar and another brother Rohidas

went to present applicant's parental house on 10-10-2021. They persuaded the applicant, and therefore, there was a settlement. Present applicant came back for cohabitation with the husband. He has also then stated about the other incident and again Nimba started saying on 20-10-2021 to Savkar that he would meet Sharad Patil (Accused No.1) and he would talk about the illicit relations. Again the brother told that since he do not have any evidence, he should not try to meet Sharad Patil. Thereafter, on the third day he went to Nimba's house and told that since Nimba is missing she should lodge a report. However, it was told that since Nimba used to go without informing, it was avoided and the present applicant asked that they should wait four to five days. In his statement under Section 161 of Cr.P.C., he then says that he was showed with the photographs of the deceased and also the family photographs and then taking into consideration the structure, they got confirmed that dead body is of brother Nimba. However, in his statement under Section 164 of Cr.P.C. he has stated that police had taken him near the well and they insisted that the dead body was of his brother, but then he told them that he is unable to identify the dead body. Even earlier also he had not identified the dead body. This time he says that in fact he was taken near the well immediately

after the dead body was taken out and he was asked to identify, but since the part of the head was missing, he had not identified. On the similar lines the other two brothers have also stated.

6. The other evidence is in the form of statements of certain witnesses stating that Nimba used to raise suspicion about the illicit relation of the present applicant and they have stated that the present applicant had avoided to lodge missing report. The discovery is by accused No.1 and whatever he has stated about the motive cannot be taken into consideration in view of bar under Section 25 and 26 of the Indian Evidence Act.

7. At the cost of repetition it can be seen that in their statement under Section 164 of Cr.P.C., the brothers are not confirming that the dead body that was found in the well was that of their brother. The DNA test report is awaited. In view of these aspects, the applicant who is in jail from considerable long time, she deserves to be released on bail. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Applicant Anita Nimba Patil arrested in connection with Crime No.263 of 2022, registered with Shindhkheda

Police Station, for the offence punishable under Section 302, 201 r.w.34 of IPC, be released on P.R.Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.

- 3) She shall not tamper with the evidence of prosecution in any manner.
- 4) She should co-operate with the investigation.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.