

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

911 ANTICIPATORY BAIL APPLICATION NO.440 OF 2022

SHITLABAI ALIAS SITALABAI W/O ANATSINH ALIAS
ANADSINH KACHAWA (THAKUR)
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Bayas Anandsingh.
APP for Respondent-State : Mr. V. S. Badakh.
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CORAM : S. G. MEHARE, J.
DATE : 21.06.2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. The learned counsel for the applicant would submit that a false report has been lodged against the family members of the applicant alleging that the deceased was throttled and then hanged. The incident happened on 12.09.2019, and on the very second day, the murder of the deceased was committed. Thereafter, the present applicant was on interim relief till 2021. Her application for anticipatory bail was rejected on merits by this Court. Hence, this application is filed after the charge sheet is filed against the applicant. He has also argued that the Post Mortem Report falsified the allegations of

throttling and hanging the deceased. The Post Mortem Report reveals simply death by hanging. The applicant is 72 years old woman and has played no role in the alleged incident, but the offence is unnecessarily made more serious than the actual incident. It has been pretended that the accused have committed the murder. On the basis of the First Information Report, initially, an offence punishable under Section 302 read with other Sections was registered, but after the Post Mortem Report, Section 302 of IPC was deleted, and Section 304-B of the IPC was applied. Since the charge sheet is filed, the custodial interrogation of the applicant is not required. Hence, the application may be allowed.

3. Per contra, the learned APP would submit that the offence happened in the seven (7) years of the marriage of the deceased; therefore, the strong presumption of dowry of death of a newly married woman is in favour of the prosecution. The applicant has no explanation against the said presumption; however, the charge sheet is filed, and other co-accused have already been released on bail. Since the offence is serious, no anticipatory bail shall be granted to the applicant.

4. It is not in dispute that a serious allegation of murder was made against the applicant and her family. It is also not in

dispute that Section 302 of IPC is deleted and Section 304-B is applied. It is the most important thing to mention here that, since the date of the incident and after rejecting her anticipatory bail application, the police did not arrest the present applicant. From this fact, it can safely be inferred that the police do not want the custodial interrogation of the applicant. Besides this, the entire paper reveals that the cause of death of the deceased is "hanging". The prosecution has no evidence of throttling. The investigation is completed. The applicant is 72 years old lady. Considering the entire facts of the prosecution case, the prosecution has neither shown interest in arresting the applicant nor has a case to have a custodial interrogation of the applicant. Hence, though the offence appears serious, the applicant has a good case for anticipatory bail. Hence, the following order :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest of the applicant Shitlabai @ Sitalabai W/o Anatsinh @ Anadsinh Kachawa (Thakur), in connection with Crime No.203 of 2019, registered with Police Station Itwara, District Nanded for the offences punishable under Sections 304B, 498-A, 323, 109, 504, 506 read with Section 34 of IPC, be released on bail on

furnishing P.B. and S.B. of Rs.20,000/- (Rupees Twenty Thousand only) with one solvent surety of the like amount on the conditions that she shall attend the Police Station as and when called by the Investigating Officer on written notice. She shall not tamper with the prosecution witnesses.

(iii) *Humdast* allowed.

(S. G. MEHARE, J.)

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vmk/-