

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

BAIL APPLICATION NO.574 OF 2022

Maroti Suryakant Munde

... **APPLICANT**

VERSUS

The State of Maharashtra

... **RESPONDENT**

.....

Mr. Menezes Jaslyn A., Advocate for applicant
Mr. N.T. Bhagat, A.P.P. for respondent No.1 – State
Mr. A.B. Kharosekar, Advocate for respondent No.2.

.....

WITH

CRIMINAL APPLICATION NO.1863 OF 2022

Keshav s/o Sadashiv Chate

... **APPLICANT**

VERSUS

Maroti Suryakant Munde & anr.

... **RESPONDENTS**

.....

Mr. A.B. Kharosekar, Advocate for applicant
Mr. Menezes Jaslyn A., Advocate for respondent No.1.
Mr. N.T. Bhagat, A.P.P. for respondent No.2 – State

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CORAM : R. G. AVACHAT, J.

DATE : 28th JULY, 2022.

PER COURT :

Criminal Application No.1863/2022 is allowed.

The original complainant is permitted to assist learned A.P.P.

2. Heard. This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0405/2021, registered at Kandhar Police Station, District Nanded for the offence punishable under Sections 302, 307, 323, 504 of the Indian Penal Code.

3. The applicant is alleged to have killed his wife by administering her pesticide. The crime has been registered based on the statement given by the victim herself. Since the victim died thereafter, the same is to be treated as a dying declaration.

4. As per the F.I.R.-cum-dying declaration, it is the case of the deceased that the applicant/ husband has been serving in Military since 5 years before her marriage. The couple is blessed with a 10 month old boy. The deceased would reside at the village while the husband used to be at his service place. He would visit the village on long holidays or on obtaining leave. On birth of the child, the applicant started suspecting the character of the deceased. He became more alcoholic. On the given day i.e. on 19/11/2021, the applicant

had consumed heavily. He bought a bottle of pesticide and told the deceased that all of them i.e. both of them and their child would commit suicide by consuming that pesticide. It is further in her statement that the applicant forcibly administered her the pesticide. She was, therefore, rushed to hospital of Dr. Madhav at Loha and then was shifted to Civil Hospital, Nanded.

5. The deceased died on 10/12/2021. Her statement/ dying declaration has been recorded by the Executive Magistrate.

6. The learned counsel for the applicant would submit that, the alleged administration of poisonous substance took place on 19/11/2021. The deceased died after 39 days of the alleged incident. The C.A. report indicates that no poison was detected in the viscera. It was also pointed out that, on the day on which the Executive Magistrate recorded the dying declaration, only 20 minutes before the doctor had certified the victim to have been unable to give the statement. As such, the dying declaration recorded within half an hour of such certification may cast serious doubt about the genuineness of the statement

recorded by the Magistrate.

7. Statement of father of the deceased recorded under Section 164 of the Code of Criminal Procedure has also been adverted to, to point out that the victim was discharged from Dr. Madhav's hospital on 20/11/2021 and on the following day, she was again taken to the hospital. The F.I.R. has been lodged six days after the alleged incident. It has been noted in the M.L.C. form that it was a case of consumption of poisonous substance.

8. Although the learned A.P.P. has strongly opposed for grant of bail to the applicant, this Court is inclined to allow the Bail Application for the following reasons :-

9. Admittedly, the relationship between the deceased and the applicant had turned sour. The applicant would suspect her character. Although the applicant allegedly administered her poisonous substance on 19th November, the F.I.R. has been lodged 7 days thereafter. The dying declaration, for the reasons stated above, is prima facie found to be doubtful. To top it, viscera report suggests detection of no poisonous substance therein. The reason therefor might

be, the victim died long after she was administered poison. Be that as it may. For all these reasons, I am inclined to grant bail to the applicant. Hence the order :-

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant be released on bail in connection with Crime No.0405/2021, registered at Kandhar Police Station, District Nanded for the offence punishable under Sections 302, 307, 323, 504 of the Indian Penal Code on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.
- (iii) The applicant shall not tamper with the prosecution evidence.

**(R. G. AVACHAT)
JUDGE**

fmp/-