

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

BAIL APPLICATION NO. 1036 OF 2022

Sandip @ Takdir @ Tagya s/o	
Harishsingh Tamchikar	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. N. S. Ghanekar, Advocate for applicant	
Mr. A. V. Deshmukh, APP for respondent - State	

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CORAM : R. G. AVACHAT, J.
DATED : 22nd AUGUST, 2022

PER COURT :-

1. 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.0001/2017, registered at Sangamner City Police Station, District Ahmednagar, for the offences punishable under Sections 302, 201 read with 34 of the Indian Penal Code.

2. Heard. Perused the First Information Report (FIR) and related papers.

The FIR has been lodged by the mother of the deceased - Sushma, on 03.01.2017. It is averred in the FIR that deceased Sushma had married one Chandrabhan Rokade. The couple was

blessed with two children. Then, there is marital discord between Sushma and her husband. Both of them were not staying together for about five years. Sushma was therefore residing along with her children in a premises adjoining the residence of the informant at Ghulewadi, taluka Sangamner. One Bharti Tamchikar, residing in the neighbourhood of the informant, was Sushma's close friend. Sushma had lent her rupees two lakh. There was, therefore, quarrel between the two over return of money. A settlement was however worked out between the two.

It is further averred in the FIR that Sushma had come to the informant's house for dinner. It was 8.30 p.m. on 02.01.2017, Sushma was not coherent in her speech. On inquiry, she told the informant that Bharti had given her juice. Due to consumption thereof, she was feeling giddiness. Sushma took her dinner. Informant asked her husband to reach Sushma to her house. Meanwhile, Bharti had come to the informant's residence. She told the informant that she would reach Sushma, her home. No one else need to accompany them. Thus, Bharti accompanied Sushma to her residence. Both the sons of Sushma came home of the informant. It was 11.30 p.m. They told that Sushma was killed at home. The informant rushed Sushma's home to find her lying in a pool of blood.

The FIR therefore came to be registered alleging Bharti to have killed Sushma with the assistance of someone.

3. The crime was investigated. It was revealed that Bharti and her son (applicant herein) had killed Sushma at her resident. Statements of both the children of the deceased were recorded. They had seen the applicant and his mother to have been in the house at the relevant time. The applicant had shown the children a knife. Bharti had collected something from the cupboard of the deceased. The lights in the house were off. Children saw the incident in a flash of cell phone battery.

4. The record indicates that, on investigation, the chargesheet was filed. The applicant came to be arrested in a recent past.

5. The learned Advocate for the applicant would submit that Bharti, mother of the applicant has been acquitted after full-dress trial. The case of the applicant was better than his mother, Bharti. The deceased was alcoholic. She would deal in illicit liquor. She had illicit relationships with an Excise Constable. Many known and unknown persons would visit her residence any time for

consumption of liquor. The learned Advocate meant to say that the deceased had many enemies accusing finger may be attributed towards any one of such persons. He took through the statements of the children of the deceased to show gross inconsistency therein. He, therefore, urged for grant of bail.

6. The learned APP would, on the other hand, submit that the applicant was absconding for little over four years. There are witnesses to indicate the applicant was present at the relevant time just outside the house of the deceased. One of the sons had seen the applicant in the house of the deceased at the relevant time. He had even shown him a knife.

7. According to the learned APP, there is material to indicate the applicant's involvement in the crime in question. He, therefore, urged for rejection of the application.

8. Perused the FIR and the papers of investigation. The FIR has been lodged based on the information received from the grandchildren. The offence dates back to January, 2017. The daughter of the informant was killed at her own residence by little past 11.00 p.m. on 02.01.2017. The case is based on circumstantial evidence.

The mother of the applicant against whom there was strong suspicion of her involvement in the crime, has been acquitted by the trial Court. The prosecution is mainly relying on the statements of the minor children of the deceased. Elder one is Prathamesh. He is 11 years of age. In his statement dated 05.01.2017, he stated that the applicant and his mother were in his house. They switched off the lights of their room. The applicant's mother was taking search for something. He was waking up his younger brother Yash.

9. Then there is police statement of Yash, wherein, he has stated that the mother of the applicant had served him and his mother (deceased), juice. He fell giddiness. He went asleep. His mother went to inside room. Lights were switched off. The applicant and his mother tied the deceased. He and his brother were shown a knife. He saw the applicant and his mother committing murder of the deceased.

10. There is statement of Prathamesh, recorded under Section 164 Cr.P.C. In this statement, he does not state the applicant to have been present in his house at the relevant time. Based on the same evidence, the trial Court has acquitted the mother of the applicant. It is not known as to whether the State has preferred any

appeal against acquittal. The prosecution is relying on the statement of one Kantabai, which was recorded ten days after the incident. It is in her statement that, by 10.30 p.m., she had come out of her house to ease herself. That time, she saw the applicant present outside the house of the deceased Sushma.

11. There is material to suggest that the deceased would consume alcohol. She was dealing in illicit liquor. She had illicit relationships with one Excise Constable. Known and unknown persons would visit her house for taking illicit liquor. There is no direct evidence indicating the applicant's involvement in the crime. Based on almost similar material, the mother of the applicant has been acquitted. The only additional material against the applicant is the statement of Kantabai, referred to above. It will take time for commencement and conclusion of trial. The application is therefore allowed in terms of following order:

ORDER

- (i) The Bail Application is allowed.

- (ii) The applicant be released on bail in connection with Crime No.0001/2017, registered at Sangamner City Police Station, District Ahmednagar, for the offences punishable under Sections 302, 201 read with 34 of the Indian Penal Code, on his executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with surety bond of the like amount.
- (iii) The applicant shall not tamper with the prosecution evidence.

[R. G. AVACHAT, J.]

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