

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

BAIL APPLICATION NO.1443 OF 2020
WITH
CRIMINAL APPLICATION NO. 2317/2021

POOJA D/O. VILAS SATHE
Age : 21 years, Occupation : Education,
Resident of Khadgaon, Tal: Latur,
Dist.: Latur
Pin Code : 413 531 (Maharashtra)

VERSUS

THE STATE OF MAHARASHTRA
Through, The Police Inspector,
M.I.D.C. Latur Police Station, Latur,
Tal.: Latur, Dist.: Latur, Maharashtra
...

Advocate for Applicant : Mr A.D. Ostwal
APP for Respondent: Mr S.G. Sangle

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 26.02.2022

PRONOUNCED ON : 03.03.2022

ORDER :

1. The applicant is seeking bail in connection with Crime No. 382/2019 registered at MIDC Latur Police Station under section 302 and 120B of I.P.C. by taking aid of section 439 of Cr..P.C., 1973.

2. There is property dispute between two families resident of Khadgaon namely, Janardhan s/o Govindrao Sathe since deceased and Vilas s/o Govindrao Sathe who happened to be the real brothers. Namdeo s/o Janardhan Sathe happens to be the son of Janardhan Sathe, who lodged the FIR on 06.11.2019 at about 9.30 a.m. about murder of his father Janardhan s/o Govindrao Sathe when he was on the way to the house on his Jupiter scooter in the evening of 05.11.2019. It is alleged in the said FIR that his father was

heading to his house on the scooter when one black colour vehicle (Tata Safari) bearing registration No. MH 12 DM 7378 gave dash to the scooter of Janardhan Sathe and caused multiple injuries. The first informant immediately picked up his father and brought him to hospital, but he was declared brought dead. According to the allegations in the FIR, most of the male members of the family of Vilas Sathe, who was behind the bar in connection with earlier crime No. 14/2019 alleged to have hatched conspiracy to commit murder of Janaradhan Sathe. They alleged to have prepared plan to hire certain persons and executed the plan on account of previous criminal case, previous rivalry and property dispute. It is stated in the FIR that black colour Tata Safari, after giving dash to the deceased, left the road and went into mud. The persons working at Deshmukh Water Plant rushed to the spot and they attempted to nab two persons, who were in the Tata Safari. One person ran away and another person was caught-hold, whose name was Gaurav Kailas Jadhav and another person ran away was Ashish Jadhav was also resident of Juni Sangvi, Pune, who was driving Tata Safari at the time of accident.

3. On the basis of FIR lodged by Namdeo son of deceased, crime No. 382/2019 came to be registered at MIDC Latur Police Station under section 302 and 120B of I.P.C. against Karansingh Gahirwal, Vishnu Sathe, Dhanraj Sathe, Prem More, Gavarav Kailas Jadhav and Ashish Jadhav, Juni Sangvi, Pune.

4. During the course of investigation, the name of present applicant - Pooja alleged to have revealed. It is alleged that applicant-Pooja is the main conspirator of contract killing of Janardhan Sathe. It is alleged that Pooja Sathe along with her paramour Rahul Tukaram Jadhav hatched the criminal conspiracy to eliminate father of the first informant. They had prepared plan after having interaction with co-accused who are in jail in connection with another

crime and hired persons from Pune to kill father of the first informant. Applicant - Pooja alleged to have sold her gold ornaments to Jeweller Mr Tatwate, resident of Savewadi. She has received Rs. 3,58,608/-. That amount alleged to have been given by Pooja to Rahul, who executed remaining plan.

5. Applicant - Pooja came to be arrested in above said crime on 08.11.2019. She was remanded to jail custody till 18.11.2019. She was remanded magisterial custody on 18.11.2019.

6. Applicant - Pooja is suffering from breast cancer since the year 2011. She had applied for interim bail on health ground. This Court (M.G. Sewlikar,J.) vide order dated 1st September, 2021 was pleased to release applicant - Pooja on interim bail on furnishing personal bond of Rs. 50,000/- with one solvent surety of the like amount on condition that she should report to the concerned Police Station after every eight days except the day of the surgery and post surgery recovery period. She was cautioned that if the condition is violated, her interim bail would be cancelled.

7. Interim bail granted by this Court to the applicant - Pooja came to be extended from time to time which is in force till date.

8. It is to be seen whether interim bail granted by this Court needs to be confirmed.

9. Heard Mr Ostwal, learned counsel for the applicant and Mr S.G. Sangle, learned APP for the State at length.

10. Mr Ostwal, learned counsel for the applicant invited my attention to the copy of FIR. He pointed out that the name of the applicant does not find place in the FIR. He further pointed out that initially, accident case was reported

to the Police Station. He invited my attention to the copy of general diary placed on record with the charge sheet. He submitted that on receiving the information about the accident, Police officials rushed to the spot. The first informant has cooked the story of killing his father by giving dash by one Tata Sumo. The hospital record and the post-mortem report also speak that the deceased had sustained injury in a road traffic accident.

11. Mr Ostwal, learned counsel for the applicant submitted that nothing has been recovered at the instance of applicant during Police custody remand. There is no iota of evidence against applicant to connect her in the alleged crime. Her entire family was behind the bar in another crime and she was visiting to her father and brother in the jail. There is no iota of evidence to show that this applicant is the main conspirator. He submitted that the applicant was arrested and after police custody remand, she was remanded to M.C.R. on 18.11.2019. She was behind the bar from 18.11.2019 to 09.09.2021(interim bail order). She was in jail for 22 months. She was released on interim bail on 01.09.2021. She has attended the Police Station as per the conditions imposed by this Court, and there is no violation of any condition.

12. Mr Ostwal, learned counsel for the applicant invited my attention to the copy of attendance memo of the applicant with MIDC Latur Police Station in support of his submissions.

13. Mr Ostwal, learned counsel for the applicant submitted that the investigation of the case is completed. The Investigating Officer has filed the supplementary charge sheet in the Sessions Court. There is no need to keep the applicant behind bars when she is taking treatment of breast cancer. He submitted that there are no criminal antecedents against her. She is no hardcore

criminal to put her behind bars.

14. Mr Ostwal, learned counsel for the applicant submitted that three co-accused persons have been released on regular bail namely, Deepak Devendra Gavali, Sitaram Tukaram Gore and Govind Chandrapalsing Gahariwal. The applicant also needs to be enlarged on the ground of parity when her alleged role is of less aggressive. He submitted that there are 124 witnesses stated in the charge sheet. The trial take may its own time. There are no extraordinary circumstances to keep the applicant-Pooja behind the bars when investigation is over and charge sheet is filed. Mr Ostwal, learned counsel for the applicant placed reliance on two sets of citations in support of his argument.

15. Mr S.G. Sangle, learned APP for the State strongly opposed to grant regular bail to the applicant-Pooja. He submitted that as per the conditions imposed in the interim bail order dated 09.09.2021, she has not surrendered before the jail authority after one month. He further invited my attention to the charge sheet and the statements of witnesses. He submitted that the Investigating Officer has collected sufficient evidence against the applicant. There is *prima facie* case against the applicant. She is a main conspirator. She hatched the criminal conspiracy with the aid of her paramour and hired certain persons and executed the plan of causing murder of Janardhan Sathe.

16. Mr Sangle, learned APP invited my attention to the statement of one jeweler - Tatwate. Mr Sangle submitted that the applicant-Pooja has sold her gold ornaments to that jeweler. After getting substantial amount, she has handed over the same to her paramour and hired certain persons to kill Janardhan Sathe and executed the plan. He submitted that cash amount of Rs. 1,50,000/- has been recovered from one co-accused under section 27 of the

Evidence Act and thereby established the role of applicant as a main conspirator. He submitted that the applicant has played main role. It is not a fit case to release her on bail though investigation is completed and charge sheet is filed. She may tamper with the prosecution witnesses if released on bail.

17. Mr Sangle, learned APP submitted that the offences alleged against the applicant are grave and serious. She is involved in case of murder. Her medical treatment is completed. She is on regular medication. There is no need to confirm the interim bail granted to her on the health ground.

18. First, I shall deal with the contention raised by Mr S.G. Sangle, learned APP about violation of one of the conditions of the interim bail imposed by this Court vide order dated 1st September, 2021. The clause No. (II) of the Order reads as under :-

(II) Needless to say if this condition is violated her interim bail shall stand cancelled. After one month she should surrender herself before the Superintendent of Jail, Osmanabad.

19. It is evident from the record that the interim bail granted by this Court came to be extended from time to time. Lastly, it came to be extended till decision of this regular bail application. As such, there was no reason for the applicant to surrender herself before the Superintendent of Jail, Osmanabad when her interim bail came to be extended by this Court from time to time. I do not find any merit in the submissions of Mr Sangle, learned APP for the State.

20. It is revealed during the course of argument as well as while perusing the copy of charge sheet that the applicant was arrested on 08.11.2019. She was behind the bars for about almost two years. She was released on interim bail vide order dated 1st September, 2021 and she came out of prison on 9th

September, 2021. She is on temporary bail on account of her breast cancer treatment. She has been operated and now, she is under medication as revealed from the status report submitted by the Police. After releasing her on interim bail, she is attending the concerned Police Station after every eight days except day of surgery and post surgery recovery period. The attendance sheet produced by the applicant is not disputed by the prosecution side. Moreover, prosecution has been fair enough to admit that the applicant has attended the concerned Police Station as per the orders of this Court and there was no violation. So, there is no question of violation of any of the terms and conditions imposed by this Court while enlarging the applicant on interim bail.

21. Further, it is evident from the record that the applicant has no criminal antecedents. She cannot be termed as a dangerous person and menace to the society. She is a lady, suffering from breast cancer and fighting with the disease. There are no any extraordinary circumstances to keep the applicant behind the bars when charge sheet came to be filed long back in the concerned Court. It is further evident from the record that there is property dispute between the two families which has resulted into this alleged incident of causing murder of Janardhan Sathe. The applicant alleged to have played role of main conspirator. However, in order to connect her role, *prima facie*, there is only one statement of one Jeweller to whom she alleged to have sold her gold ornaments and collected the cash and in turn, alleged to have given to the co-accused for contract killing. Except this statement of one witness Jeweller – Tatwate, there is no connecting evidence regarding role allegedly played by this applicant as a main conspirator. The copy of the jail visit book relied upon by the prosecution regarding the visit of the applicant to meet her father and brother is obvious and at this stage, it is difficult to connect that material with the applicant. That

exercise would be done at the time of trial.

22. The applicant is presently pursuing her Masters in Arts. It appears from the record that the Sessions Court has framed charges against the applicant/ accused, not even a single witness is examined till today. There are 124 witnesses cited in the charge sheet which would take its own time. The law on bail is well settled. Even though Mr Ostwal, learned counsel for the applicant has referred so many citations on the point of bail and criminal conspiracy, no need to discuss each and every citation in view of the recent citation of the Hon'ble Supreme Court in case of **Anil Kumar Yadav Vs. State (NCT of Delhi)** reported in **(2018) 12 SCC 129**, wherein the Hon'ble Supreme Court has laid down the significant considerations for grant of bail which are as under :-

17. While granting bail, the relevant considerations are -

- (i) nature of seriousness of the offence;
- (ii) character of the evidence and circumstances which are peculiar to the Accused; and
- (iii) likelihood of the Accused fleeing from justice;
- (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and
- (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast Rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.

23. Ultimately, the Court considering the application for bail needs to exercise its discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to have committed by the accused on one hand and ensuring purity of the trial of the accused on the other.

24. Co-accused Deepak Devendra Gavali, Sitaram Tukaram Gore and Govind Chandrapal Singh are released on bail. The role attributed to the applicant and role attributed to said three accused though different, there is no reason to reject the prayer of bail of this lady applicant who is suffering from breast cancer. Basic rule of our criminal justice system is “bail, not jail.”

25. Having considered the aforesaid facts, stage of the sessions trial, I am of the considered view that it is necessary to grant bail to the applicant, however, by imposing certain conditions which would take care of apprehension put forth by the prosecution agency and to ensure smooth trial.

26. The observations made by this Court are *prima facie* and to the extent of deciding bail application of applicant. The trial Court shall not get influenced of those observations made by this Court.

ORDER

1. The application for regular bail moved by the applicant – Pooja D/o Vilas Sathe in connection with Crime No. 382/2019 registered at MIDC Police Station, Latur under Section 302 and 120-B of Indian Penal Code is hereby allowed on certain conditions as under :-
 - (a) The applicant - Pooja D/o Vilas Sathe shall furnish her personal bond of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two solvent sureties of like amount.
 - (b) The applicant shall stay away from District Latur except her medical treatment and attendance before the Sessions Court at Latur, till conclusion of Sessions trial.

- (c) The applicant shall not tamper with the prosecution witnesses in any manner.
- (d) The applicant shall furnish her in-detail address and mobile number with Sessions Court and concerned Police Station.
- (e) The applicant shall attend concerned Sessions Court on the dates fixed unless exempted by the Sessions Court and co-operate in the trial.
- (f) Needless to say that if any condition imposed by this Court is violated, the bail granted to the applicant shall be cancelled.
- (g) Bail before the Sessions Court, within eight days from today and till then interim bail to continue.
- (h) Criminal Application No. 2317/2021 stands disposed of in view of the decision of bail application No. 1443/2020.
- (i) Inform to the Sessions Court, Latur and concerned Police Station for information and further compliance.
- (j) Bail Application No. 1443/2020 and Criminal Application No. 2317/2021 are accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)