

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1153 OF 2021

1. Nasimabee w/o Jafar Khan
 2. Arbaj Khan s/o Jafar Khan
- ... Applicants

Versus

The State of Maharashtra

... Respondent

...

Mr. S. R. Bagal h/f Mr. B. N. Gadegaonkar, Advocate for applicants.

Mr. N. T. Bhagat, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 12.01.2022

Pronounced on : 01.02.2022

ORDER :-

1. Present applicants, who have been arrested in connection with Crime No.503 of 2020 registered with Sadarbazar Police Station, Dist. Jalna for the offence punishable under Sections 302, 316, 324, 143, 147, 148, 149, 427, 120(B), 201, 452, 109 of Indian Penal Code, are claiming bail under Section 439 of the Code of Criminal Procedure.

2. It will not be out of place to mention here that the earlier Bail Application No.114 of 2021 filed by applicant No.1 was disposed of as withdrawn by this Court on 17.02.2021.

3. Heard learned Advocate Mr. S. R. Bagal holding for learned Advocate Mr. B. N. Gadegaonkar for the applicants and learned APP Mr. N. T. Bhagat for the respondent – State.

4. It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated. Applicant No.1 is an old aged pardanashin lady, whereas the applicant No.2 is a young boy of 21 years. They have been unnecessarily kept behind the bars. The first information report has been lodged by one Sayyad Majid on 10.08.2020 in respect of the incident that had allegedly taken place between 10.30 p.m. to 11.00 p.m. on 09.08.2020. It is alleged that the wife of the informant has been murdered by the accused persons. Now, the investigation is over and case has been committed to Court of Sessions bearing Sessions Case No.157 of 2020. Perusal of the FIR as well as entire charge-sheet would show that no admissible as well as credible evidence has been collected as against present applicants. No specific overt act has been attributed by the informant against them. Only the child witnesses have given names. Co-accused have been released on regular bail by this Court and, therefore, on the ground of parity, the applicants are entitled to be released on bail. It would take long time for the trial to stand. The possibility that the child witnesses being tutored cannot be ruled out and the further detention of the applicants

would amount to pre-trial conviction. There is no progress in the trial since withdrawal of application of applicant No.1. The applicants are ready to abide by the terms of the bail.

5. Per contra, the learned APP has strongly opposes the application and submitted that there is evidence against the applicant. The wife of the informant, who was pregnant on the day of incident, has been brutally murdered. The postmortem report, column No.17, discloses that there were 12 external injuries, which were caused due to sharp edged weapon as well as blunt object. There were internal injuries and the probable cause of death is stated to be head injury. As against applicant No.1 it is stated that he had inflicted injury by knife and it is seen from item No.9 in column No.17 that the medical officer has opined that, that injury is possible by sharp edged weapon. As against applicant No.2, it is the prosecution story that he assaulted deceased with hammer. There are other wounds which can be said to have been caused by such objects. The child witnesses are not so young. The daughter of the deceased was aged 11, who has named applicant No.2 and gave specific role to him, whereas applicant No.1 has been referred as "Jafar ki Aurat" and the role attributed to her is assault by knife. Further, the CCTV footage from the camera of the informant himself has been recovered and the panchanama would show that the present

applicants have been identified. Weapons have been used by these persons and, therefore, no case has been made out to release them on bail. All these documents were seen by this Court earlier and after disinclination is shown, her application was withdrawn. Now, there is no change in the circumstance. The application deserves to be rejected.

6. It is to be noted that the FIR has been lodged by one Sayyad Majid Sayyad Qayyum. Deceased Heena was his wife, who had 4 daughters from her first husband. Heena got married to informant about two years prior to the incident and she was pregnant on the date of the incident. All the family members were sleeping around 10.30 p.m. to 11.00 p.m. on 09.08.2020. When they found that door of their house has been broken after a big noise, they found the persons who had arrived inside the house, were the relatives of the first husband of Heena. In all, seven persons had barged into the house of the informant. Thereafter, those seven persons had dragged Heena outside the house, where four persons were waiting. Out of them Ismail was holding knife. All of them had assaulted Heena with iron rod, wooden stick, knife etc. He disclosed that the CCTV-DVR was taken by the accused. During the investigation, statements of witnesses were recorded including the statement of daughter of Heena. She has disclosed role of each of the accused. As against applicant No.2, she says that he had assaulted her mother by

hammer and in her supplementary statement, she has stated that the said blow was given on the head. Applicant No.1 has been referred as *“Jafar bhai ki Aurat”* and it is stated that she had given blow with the help of knife. The other witnesses are also supporting the statement of the child witness. As aforesaid, the postmortem report discloses about 12 injuries and it appears to be a brutal murder of a lady, who was pregnant. The another piece of evidence is the CCTV footage and the panchanama specifically states that present applicant No.2 had taken away CCTV-DVR box. It has been discovered by him under Section 27 of the Indian Evidence Act and after it was opened and played, the accused persons have been identified. Therefore, though the young age of applicant No.2 has been pleaded, he had that maturity to take away the CCTV cameras and DVR also, so that there should not be any evidence. Taking into consideration the role attributed to the applicants, they do not deserve sympathy. So also, they cannot claim parity as against the other co-accused are concerned. All these facts were noted by this Court earlier also and, therefore, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

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