

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

BAIL APPLICATION NO.1623 OF 2022

**GYANOBA NAGORAO GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Ingole Govind Rangrao
APP for Respondent/State : Mr. S.B. Narwade
...

CORAM : S.G. MEHARE, J.

DATED : 12th OCTOBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State at length.
2. The applicant has been roped as an accused for the offences punishable under Section 302, 498-A, 201 r/w 34 of the Indian Penal Code. The applicant did not dispute that the deceased was his wife. It has been alleged against the accused that the applicant and his family members were harassing the deceased for bringing money to purchase the auto rickshaw. Two months before the incident, the father of the deceased sold the ornaments of his wife for Rs.60,000/- and paid to the applicant. Thereafter, the applicant was saying the deceased that he cannot get the auto rickshaw for Rs.60,000/-. He continued harassing her. Since their demands were not fulfilled, they have strangulated the deceased in the house.

3. Learned counsel for the applicant argued for three to four times. He has referred to the statement of various witnesses particularly the statement of one child witness namely Aarti Arun Gaikwad and has vehemently argued that she had stated that when she went to the house of the accused, he did not see the applicant/accused. She also stated that she saw the deceased hanging on the fan with scarf and wire. He also referred to the statement of the another child witness Rajnandini and argued that her statement is contrary to the statement of the above child witnesses. He has referred to the statement of one Asha Uttam Kamble, the step mother of the deceased who stated that she received information on phone that the deceased fell down from the ladder, hence she went there. She saw the deceased lying on the cot in the hall of the house. Her father also stated the same facts. In sum and substance, he has a case that it was a case of suicide.

4. The applicant has also the case of *alibi*. To prove the *alibi*, he has referred to the statement of witness Rakesh Tukaram Gaikwad. He stated before the police that on 31.03.2021, he and one Sayaji Bhagwan Bhandare were sitting at Annabhau Sathe Samaj Mandir at 03.30 pm and they were watching movie on the mobile handset. That time, the applicant came there and sat beside them. When they were watching the movie, the cousin brother of the applicant came there and told him that the deceased died. Thereafter, the applicant went

to his home. He has also referred to the post-mortem report and pointed out that there are no signs of strangulation nor the injuries on the person of the deceased.

5. He also referred to the spot panchnama and pointed out that a nylon wire and one scarf was seen intact to the ceiling fan. He would try to argue that the spot of the incident was not disturbed by the applicant. Many persons were gathered near his house before he reached his home. Therefore, the allegations levelled against him that he strangled the deceased are unfounded, baseless and irrelevant. He has also argued that there are no antecedents to the discredit of the applicant. He has a small female child. He has to look after her. The investigation is over. Nothing is to be recovered from him. Hence, he may be released on bail.

6. Learned APP has strongly opposed the application contending that the witnesses are consistently stating that the applicant was regularly beating the deceased and quarrelling with her. There are independent witnesses deposing about the regular quarrels between the deceased and the applicant. He has referred to the statement of a child Rajnandini and pointed out that in the evening, the quarrel was going on in between the deceased and the applicant. She saw the applicant going towards Samaj Mandir. Thereafter, another child witness Aarti went inside the house of the applicant, therefore, she also went there. She saw that the deceased was

hanging with green colour wire and her child was crying there. Hence, she picked up the child and came out of home. He would submit that there are material suspicious circumstances against the applicant. When these witnesses saw the deceased hanged, then who removed her from the noose and led on the cot in the house. The conduct of the applicant is greatly suspicious. After committing the murder he went to the Annabhau Sathe Samaj Mandir. He created a picture that he was knowing nothing and then came running to his home pretending that he did not know anything about the incident. He has also vehemently argued that the ligature marks were completely encircling the neck. The skin over the ligature mark was dark brown. The ligature mark was in horizontal direction. The cause of death as opined by the medical officer was death due to ligature strangulation. The viscera was preserved by the medical officer. He prayed to dismiss the application for the reasons that there are child witnesses to the incident. The grandparents of the child are able to take care of his child.

7. Learned counsel for the applicant was asked to explain who has removed the dead body from the noose. He referred to the evidence of Village Sarpanch and would argue that at her instance, the dead body was removed from the noose and led on the cot. However, after having gone through the evidence of Village Sarpanch,

she did not state that at her instance the dead body was removed from the noose and led on the cot.

8. In A Textbook of Medical Jurisprudence and Toxicology, Twenty Seventh Edition by Dr. J.P. Modi of the year 2021 at page no.578, Dr. Modi has discussed the external appearances on the neck of ligature mark in the case of strangulation. It has been observed in para 20.3.5.1.1 (i) that “Ligature mark is a well-defined and slightly depressed mark corresponding roughly to the breadth of the ligature, usually situated low down in the neck below the thyroid cartilage and encircling the neck horizontally and completely. The mark may be oblique as in hanging, if the victim has been dragged by a cord after he has been strangled in a recumbent posture, or if the victim was sitting and the assailant applied a ligature on the neck while standing behind him, thus using the force backward and upward.” A clear cut opinion has been expressed by Dr. Modi that in case of ligature strangulation, the ligature mark would usually situated low down in the neck below the thyroid cartilage and encircling the neck horizontally and completely. The post-mortem report is exactly the same showing that the it was a strangulation. Those are no signs of hanging.

9. One of the child witness Rajnandini stated that that she saw the applicant going towards the Samaj Mandir. The other witnesses have stated that when they were sitting at the Annabhau

Sathe Samaj Mandir, the applicant went there and in short time, he learnt about the incident and went back. The statement of the witnesses reveals that the applicant used to quarrel with the deceased regularly and also beating her. The statement of the child witness Rajnandini cannot be discarded at this juncture. There is also a evidence that on the day of incident, the applicant was at home all day.

10. The circumstances are apparently against the applicant. He has no satisfactory explanation atleast *prima facie*, to convince the Court that it is a case of suicide and not the death due to strangulation. The offence is serious and *prima facie* evidence is against the applicant. Hence, he does not deserve bail. The bail application stands dismissed.

11. Needless to state that the observations are restricted to the bail applications only.

(S.G. MEHARE, J.)