

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

938 BAIL APPLICATION NO.1786 OF 2022

Radhabai W/o Bhimrao Kharate
Age : 49 years, Occ : Agri.,
R/o Bhogaji, Tq. Kallamb,
Dist. Osmanabad.

..APPLICANT

-VERSUS-

The State of Maharashtra
Through Police Inspector,
Police Station, Yusuf Wadgaon,
Tq. Kaij, Dist. Beed.

..RESPONDENT

...

Ms.A.S. Madake h/f Mr.S.S. Thombre, advocate for
applicant.
Mr.K.S. Patil, APP for the respondent/State.
Mrs.S.S. Renge, advocate for the complainant.

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CORAM : S.G. MEHARE, J.
DATE : DECEMBER 07, 2022

PER COURT :-

. Heard learned counsel for the
applicant, learned APP for the respondent/State
and learned counsel for the complainant.

2. The applicant has claimed she has been
arraigned as an accused on suspicion. The false
story has been cooked up against her. She has
been residing separately from the deceased for
more than ten years. The deceased had many bad
vices. The deceased was married to one another
lady and living separately. The deceased had

multiple illicit relations with the women. The complainant pressured the children. In a statement dated 5th June 2021, the complainant did not express suspicion against anybody. The co-accused has been granted bail by this Court, who has allegedly played a similar role. When the body was found floating in the well, the Accidental Death under section 174 of the Code of Criminal Procedure was registered, and in that inquiry, it transpired that due to debts and the habit of consuming liquor, the deceased committed suicide. Learned counsel for the applicant relied upon some cases on the point of last seen together theory and principle of circumstantial evidence.

3. Learned counsel appearing for the complainant has argued at length, explaining in detail how the Police favoured the accused. He had to run from pillar to post to get relief. The Police did not entertain him. He lodged a report with D.I.G. Then he applied section 156(3) of the Criminal Procedure Code. Learned counsel has referred to the detailed order of the learned Magistrate under section 156(3) of Cr.P.C. She argued that the prosecution has evidence that the applicant and her paramour were not at home on the date of the incident. The Police did not collect the CCTV footage, which the complainant recovered, showing that the deceased and accused

were going together on a bike. The wallet of the deceased was also found on the road, which was found to one of the witnesses. He gave it to another person, and he gave it to the complainant. She has vehemently opposed the application and would argue that the present applicant had *mens rea* to kill the deceased with the sole intention of having a job for her son in his place. Therefore, the role attributed to the co-accused while granting bail is different. Thus, the parity may not be extended. She would further submit that case laws relied upon by the applicant are not applicable to the present case. The offence is serious. Hence, the applicant may not be granted bail.

4. Perusal of the papers reveals that crime has a chequered history. At the initial stage, the present complainant had no suspicion against anybody, much less against the present applicant, who was the wife of the deceased. The material placed on record supports the contention of the applicant that she was residing separately from the deceased. The deceased married another lady. The applicant had a suspicion that the deceased was HIV positive. However, the spot panchnama reveals that a few stones were in the pocket of the shirt of the deceased. On that basis, it has been claimed that the applicant and paramour took him to the place of the incident.

She assaulted him mercilessly. He fell unconscious, and then the accused threw him into a well keeping the stones in the pocket of the shirt of the deceased. Similarly situated accused has been granted bail by this Court by order dated 26th September, 2022 in Bail Application no.1068/2022. In the said order, the facts argued by the learned counsel for the applicant were considered, and bail was granted.

5. The record reveals that the witnesses came forward after four months after the incident. Further, it is apparent that the deceased and the applicant were not residing together. The statements of the son and daughter of the deceased reveal that the complainant forced him to state against the accused and to give the incorrect statement before the Magistrate. Be that as it may, the investigation is complete. The relations between the applicant and the deceased were not cordial. The motive has to be gathered from the circumstances. The trial may take its own time. Considering the bail granted to the similarly situated co-accused, the applicant may be entitled to parity. Hence the following order:-

ORDER

- (i) The application is allowed.
- (ii) Applicant be released on bail, on furnishing PB and SB of Rs.50,000/- with one solvent surety

of the like amount, in C.R. No.0133/2021 registered with the Police Station Yusuf Wadgaon, Tq. Kaij, Dist. Beed for the offence punishable under section 302, 120-B, 109 r/w 34 of the Indian Penal Code on the condition that they shall not tamper with the prosecution witnesses.

(iii) Criminal Application No.3646/2022 stands disposed of.

(S.G. MEHARE, J.)

SGA