

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.359 OF 2022

Ashwini Shrikant Yalgonde ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Ashok Tajane, for the Applicant.
Mr. A.A. Palkar, APP, for the State.

CORAM : N. J. JAMADAR, J.
ORDER RESERVED ON : JULY 06, 2022
ORDER PRONOUNCED ON : JULY 19, 2022

P.C.:

1. The applicant is arraigned along with co-accused in C.R. No. 444 of 2021 registered with Vijapur Naka police station for the offences punishable under sections 120B, 302, 201 read with 34 of Indian Penal Code, 1860 for having committed murder of her husband Shrikant Yalgonde (the deceased) in pursuance of the conspiracy with the co-accused Nos. 2 and 3 and caused disappearance of the evidence in order to screen themselves from punishment.

2. The indictment against the applicant is as under:-

The marriage of the applicant No. 1 was solemnized with the deceased on 5th October, 2012. They were blessed with two children.

The deceased was allegedly given in to the vice of consuming liquor. The deceased allegedly suspected fidelity of the applicant. The deceased threatened to sale the agriculture land, of which he was the holder. There was frequent quarrels between the applicant and the deceased.

3. The prosecution alleges that consequent to the quarrel which the applicant had with the deceased on 28th August, 2021, the applicant had called her brother accused No. 2 Vijaykumar Patil and accused No. 3 Siddheshwar Birajdar, the later's friend, to her home on 29th August, 2021. A quarrel broke out as the deceased questioned the presence of co-accused No. 2 Vijaykumar. The applicant and the co-accused allegedly assaulted the deceased. The applicant gave blows by means of screw driver on the head of the deceased. Accused No. 2 assaulted the deceased by means of belt, whereas accused No. 3 gave fist and kick blows on the chest of the deceased. While the deceased was leaving the house, the applicant assaulted the deceased by means of blade of a dis-functional fan and stone. The deceased sustained bleeding injury. The applicant and co-accused No. 2 dragged the deceased into the bathroom. As the deceased was wailing, the applicant stashed a cloth (dupatta) into the mouth of the deceased. The applicant allegedly brought a fan

stater (gattu) and gave blow by means of the said stater on the head, chest, face and nose of the deceased. After accused Nos. 2 and 3 left the house, the applicant brought the deceased to the bedroom and made him lie on the bed. The dead body of the deceased was kept in the said room till 31st August, 2021. It started emitting foul smell. The applicant mislead the relatives by informing that the deceased died whilst he was asleep as he had sustained injuries on his head.

4. After being apprised, the police visited the scene of occurrence. Inquest was held. The dead body was sent for postmortem examination. Scene of occurrence panchanama was drawn. Post initial investigation, Mr. Suraj Mulani, PSI, Vijapur Naka police station lodged report on behalf of the State. The applicant came to be arrested on 8th September, 2021.

5. Mr. Tajane, the learned counsel for the applicant submitted that the deceased died on account of the injuries sustained in the occurrence, wherein the deceased was an aggressor. Initially it was the deceased who had started assaulting the applicant by means of screw driver, kept on the fridge. To save herself, the applicant snatched the screw driver and gave blows as the deceased had

caught hold of her hairs. The deceased fell down. The applicant took him to the bathroom to wash of the blood stains. In fact, the applicant had applied turmeric on the injuries sustained by the deceased and made him lie on the bed. The deceased, however, did not wake up till of 31st August, 2021. Thereafter, the police arrived and took the deceased to the hospital.

6. Mr. Tajane would urge that there was no mens rea. The applicant did not intend to cause the death of the deceased. The incident occurred at the spur of moment. It was further submitted that two children are dependent on the applicant. She has been in custody for almost one year. The applicant being a women, the Court may exercise the discretion in favour of the applicant, submitted Mr. Tajane.

7. I have carefully perused the report under section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it.

8. At the outset, it is imperative to note that the applicant and the deceased were only major persons in the house where the deceased was found dead. Notwithstanding the circumstances, in

which the deceased met death and the role attributable to the applicant herein, there is, prima facie, not much dispute over the fact that the incident occurred on 29th August, 2021 and the dead body of the deceased lay in the bed room till 31st August, 2021. The applicant, it seems, has narrated a version which proceeds on the line that initially it was the deceased who attempted to cause hurt to the applicant by means of screw driver, she snatched the screw driver and gave few blows on the head of the deceased. The later sustained bleeding injuries. She took him to bathroom. Washed of those injuries and made him lie in the bed room.

9. In the disclosure statement made on 8th September, 2022, leading to the recovery of screw driver, iron blade of fan, iron stater (gattu), stone, cloth (dupatta), the applicant seems to have stated that she would produce the aforesaid articles by means of which the deceased was assaulted.

10. At this stage, it is necessary to note the injuries noted by the autopsy surgeon on the person of the deceased. As many as, 19 ante-mortem injuries were noted on the person of the deceased. Out of them injury Nos. 2 to 11 were fingernail abrasions. Injury Nos. 12 to 19 were possible by hard and blunt object. Injury Nos. 12 to 15

appear to be fatal. They read as under:-

12] Contusion of size 5 cm x 4 cm present over the left frontal region, reddish brown in colour admixed with the colour of the decomposition changes.

13] Lacerated wound of size 5 cm x 0.8 cm x tissue deep present over the parieto-occipital Region, obliquely placed. Infiltration of blood in surrounding margins.

14] Contusion of size 3.5 cm x 4 cm present over the right side of the forehead, in colour admixed with the colour of the decomposition changes.

15] Contusion of size 5 cm x 4 cm present over the left side of the forehead, in colour admixed with the colour of the decomposition changes.

11. The autopsy surgeon opined that aforesaid injury Nos. 12 to 15 were sufficient in the ordinary course of nature to cause death. At the time of postmortem examination, decomposition changes were seen.

12. The aforesaid nature of the external injuries narrated by the autopsy surgeon prima facie belies the version of the applicant that she gave a couple of blows by means of screw driver on the head of the deceased in order to save herself. On the contrary, it appears that the deceased was belabored to death. What exacerbates the situation is the fact that the deceased was made to lie, and in a sense, left to die, in the bedroom after the deceased sustained fatal injuries. This conduct, coupled with the allegations that the

applicant had tried to cause disappearance of evidence, give false information to the relatives and misdirect the investigating agency, makes it rather difficult to accede to the submission on behalf of the applicant that the occurrence does not betray any guilty mind on the part of the applicant. At this juncture, in my view, there is adequate material to make out a prima facie case against the applicant. In the circumstances of the case, it may not be expedient to exercise the discretion in favour of the applicant.

13. One factor which, however, troubles the Court is the predicament of the children. In the circumstance, it may be expedient to request the Session Court to expedite the trial. In case the trial is not completed within a reasonable period, the applicant ought to have liberty to revive the prayer for bail.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] The learned Sessions Judge, seized with the Sessions Case arising out of C.R. No. 444 of 2021 registered with Vijapur Naka police station is requested to commence the trial and conclude the same as expeditiously as possible and preferably before 30th June, 2023.

3] The applicant and co-accused shall render the necessary cooperation for the expeditious trial and shall not seek adjournment.

4] In the event, the trial is not concluded by 30th June, 2023, the applicant shall be at liberty to revive the prayer for bail.

5] By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

(N. J. JAMADAR, J.)