

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2005 OF 2022**

Naran Jera Chaudhary .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Satish J. Agarwal with Ms.Dhara Shah for the Applicant.

Mr.S.V.Gavand, A.P.P. for the State/Respondent.

PSI Tushar Potekar, attached to Kalwa Police Station, Thane, present.

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CORAM: BHARATI DANGRE, J.

DATED : 24th AUGUST, 2022

P.C:-

1. At the outset, learned counsel for the applicant states that the name of applicant was mentioned as 'Naran Jera Choudhary', but since his name in the lower Court is mentioned as 'Narayan Jera Choudhary', he has corrected it. However, on the basis of the Aadhar Card, which is placed before me, he states that the title clause requires to be rectified by restoring the name of the applicant as 'Naran Jera

Choudhary'. Learned A.P.P. also states that the charge-sheet also reflects his name as 'Naran Jera Choudhary'.

Let the necessary amendment to that effect be carried out forthwith.

2. The applicant is the husband of one Kavita, who was found dead in the house on 26/02/2021. On the postmortem being conducted, cause of death has been ascertained as 'Asphyxia due to throttling'. The prosecution alleged that the applicant is responsible for the homicidal death of Kavita and he had strangled her.

On a complaint being lodged by the sister of the deceased, subject C.R.No.87 of 2021 was registered with the MIDC Police Station. The applicant was arrested on 28/02/2021 and on completion of investigation, the charge-sheet is filed.

3. With the assistance of the learned counsel for the applicant and the learned A.P.P., I have perused the charge-sheet. The statement of the minor child, aged 8 years who was the only person present in the house, apart from the applicant and the deceased, is recorded during the course of investigation. He specifically states that, his father was seen leaving the house in the morning hours by taking his helmet.

Thereafter, he got up at 11 o'clock and went to the bathroom and then he called his mother, who was found sleeping. All efforts of the child to wake his mother failed and, thereafter, he started watching cartoon on Television. After some time, he made a phone call to his father and, thereafter, some one knocked the door. Upon opening the door, he found his aunt outside. She also made attempts to wake up his mother and, thereafter, it is stated that the applicant and the police arrived at the spot and his mother was taken to the hospital.

4. The postmortem report refers to certain abrasions in form of crescentic contusion over left side of neck below chin about 5 cm x 2 cm, reddish in colour. All other abrasions, which are mentioned in column No.17 are situated near around the said injury. The postmortem report records fracture of hyoid bone and as stated above, the cause of death has been given as 'Asphyxia due to throttling'.

5. During the course of investigation, the blood samples were obtained and the hair and nail samples of the applicant were also forwarded for chemical analysis, which has given a negative report, indicating that the injuries found on the deceased, *prima facie*, cannot be attributed to the present applicant.

6. The statements of the witnesses compiled in the charge-sheet vaguely refer that there was some discord between the husband and wife, but without any specific incident being referred to by the neighbours, which could create a suspicion in favour of the applicant.

The material compiled in the charge-sheet falls short for holding the applicant guilty for causing death of Kavita.

As far as the burden to be discharged by the applicant under Section 106 of the Evidence Act is concerned, the applicant's case is specific to the effect that on 26/02/2021, he had a conversation with his wife and at about 9.30 a.m., he left to attend his work place, a stationary shop in Mahim. He called up his wife at around 11.03 a.m., but she did not pick up the phone and only at 13.09 hours, he received a phone call of his son informing him that mother is not getting up. As far as the analysis of CDR is concerned, it is not a part of the charge-sheet as on date.

7. Mere suspicion is not sufficient to indict a person as an accused and in absence of cogent material compiled in the charge-sheet, which would result in conviction. Recording *prima facie* that the applicant cannot be held responsible for the death of the deceased and ultimately it is for the

prosecution to prove that it is only the accused, who is responsible for causing her death, he deserves his release on bail.

Needless to state that the observations made above are *prima facie* in nature and limited for the purpose of determination of the present application and the learned Judge trying the applicant for the offences with which he is charged, shall not in any manner, be influenced by the above observations.

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Naran Jera Choudhary shall be released on bail in connection with C.R.No.87 of 2021 registered with MIDC Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall mark his attendance before the concerned police station on first Saturday of every month between 3.00 p.m. to 5.00 p.m. till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(SMT. BHARATI DANGRE, J.)