

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3045 OF 2021

Swati Shivaji Kamble

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr. Shekhar A. Ingawale, for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent / State.

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CORAM : C.V. BHADANG, J.
DATE : 15 FEBRUARY 2022

P.C.

. By this Application, the Applicant – Accused No.2 is seeking release on bail.

2. The Applicant alongwith her husband Shivaji Kamble has been chargesheeted for the offence punishable under Section 302, 323 and 504 r/w. 34 of IPC, arising out of Crime No. 350/2020 of Police Station Vadgaon, District Kolhapur.

3. The aforesaid offence is registered on the basis of the complaint lodged by Bhagwan Sadhu Kamble who is the father of deceased Avinash Kamble. Co-accused Shivaji happens to be the

uncle of deceased being cousin brother of Bhagwan Kamble. Deceased was residing alongwith his wife, children and the parents at Village Shahunagar Talsare, Tehsil Hatkanangale, District Kolhapur. The Applicant is residing adjacent to the house of the deceased and there is a compound in between their houses having *shenda* trees. The incident in question has happened on 1 October 2020 at about 7.30 a.m. when the deceased was proceeding to bring fodder from the field. It is said that the Applicant was plucking the *shenda* leaves and the deceased asked her as to why she is throwing the *shenda* leaves in the portion of the house of the deceased. When the deceased started proceeding to his field, the Applicant is alleged to have filthily abused the wife of the deceased when the deceased came back and accosted the Applicant as to why she has abused his wife. It is said that at that time, the co-accused Shivaji came and the Applicant alongwith her husband Shivaji pressed the neck of the deceased on account of which he fell down. When the first informant went to intervene, he was assaulted by Shivaji with a bamboo stick, because of which, the first informant sustained an injury to his left hand. Avinash was carried to the hospital where he was declared dead. On the basis of the complaint lodged, offence came to be registered and after investigation, the chargesheet is filed.

4. I have heard the learned counsel for the parties. Perused record.

5. It is submitted by the learned counsel for the Applicant that the deceased was a young man of 35 years of age and strongly built. He submitted that it is improbable that the Applicant who is a 58 years old lady and her husband who is 60 years of age could throttle the deceased to death. It is alternatively submitted that the incident happened on the spur of moment and there are circumstances to indicate that the deceased came back and accosted the Applicant as to why she is abusing his (the deceased's) wife when the incident is alleged to have happened. It is submitted that there is a delay in recording the FIR. It is pointed out that although the incident is alleged to have happened at 7.30 a.m. the complaint is lodged at about 1.08 p.m. and for which there is no explanation. It is submitted that the investigation is complete and the chargesheet is filed and the further detention of the Applicant in the custody is not necessary.

6. Learned APP has submitted that there are eye witnesses including the child witness who have stated about the incident in which Applicant and the co-accused have pressed the neck of the deceased resulting into his death. It is pointed out that the Post Mortem report also shows death on account of "Asphyxia due to manual strangulation".

7. I have considered the submissions made. *Prima facie*, it appears that there is no premeditation on the part of the Applicant. It appears that the deceased first asked the Applicant not to throw the leaves in his portion and then started going to his field when the Applicant is alleged to have abused his wife. Thereafter, deceased came back and accosted the Applicant as to why she is abusing his wife. It is at that point of time, when it is said that co-accused Shivaji came and Applicant and her husband Shivaji pressed the neck of Avinash resulting into his death. This is not a stage where the prosecution evidence can be appreciated in detail so as to record any final opinion. However, suffice it to mention that the investigation is complete and the chargesheet is filed. The Applicant was arrested on 2 October 2020 and is in jail since then. I find that the Applicant being a lady, would also be entitled to the benefit of first proviso to Sub-Section 1 of Section 437 of Cr.P.C. which is an additional circumstance in favour of the Applicant.

8. Considering the over all circumstances, the following order is passed.

ORDER

- (i) The Criminal Bail Application is allowed.
- (ii) The Applicant Swati Shivaji Kamble be released on bail, on executing a P.R. Bond in the sum of

Rs.25,000/- with one or two solvent sureties in the like amount.

(iii) The Applicant shall undertake to remain present before the learned Sessions Judge during the course of trial.

(iv) The Applicant shall not directly or indirectly make any attempt to tamper with the prosecution evidence or witnesses.

(v) It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(vi) Bail bonds to be furnished before the learned Sessions Judge.

C.V. BHADANG, J.