

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 BAIL APPLICATION NO.81 OF 2022
WITH
CRIMINAL APPLICATION NO.511 OF 2022

BEBI DATTATRAY RAUT

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.G. Ladda, Advocate for applicant

Mr. A.M. Phule, APP for respondent

Mr. G.A. Kulkarni, Advocate h/f Mr. D.R. Deshmukh, Advocate for assist to PP

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 03rd JANUARY, 2023

ORDER :

1 Criminal Application No.511 of 2022 filed for assist to PP stands allowed and disposed of.

2 Bail Application No.81 of 2022 has been filed under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested in Crime No.227/2020 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 registered with Pundlik Nagar

Police Station, Aurangabad (City). She came to be arrested on 28.07.2020. Practically it is her third application for bail. Her earlier Bail Application bearing No.29 of 2021 was also for regular bail and it was withdrawn by her on 13.01.2021. Thereafter, she filed second bail application i.e. Bail Application No.41 of 2021 and it was also disposed of as withdrawn on 10.02.2021 after disinclination was shown by this Court to grant any relief to her. It will not be out of place to mention here that even at that time the charge sheet was filed and, therefore, there is no change in the circumstances as such, however, in addition she is seeking bail on the ground of illness of her husband and it is stated that he requires attendance as she is supposed to undergo an operation.

3 Heard learned Advocate Mr. S.G. Ladda for the applicant and learned APP Mr. A.M. Phule, well assisted by learned Advocate Mr. G.A. Kulkarni, for respondent.

4 At the outset, the medical ground is considered first. The documents on record show that the husband of the present applicant is suffering from CAG : Single Vessel disease. He has been advised coronary angioplasty with stenting, when he was discharged on 17.11.2021. The latest report was called and it appears that he has got himself checked on

30.12.2022. It appears that he was investigated and further course is stated to be on OPD basis with 14 days management as per the discharge card dated 30.12.2022. The course in the hospital is stated, “*patient admitted with above mentioned complaints. Patient’s general condition evaluated and investigation sent and managed accordingly. Cardiologist call given I/V/O coronary angiography opinion. Now patient’s general condition improved, hence discharged on follow up medication.*” This shows that his condition is now improved and there is no question of undergoing any operation. Hence, the said medical condition of the husband cannot be the ground for release on bail of the applicant.

5 Now, turning to the merits, as aforesaid, this Court had already shown the disinclination to grant any relief and, therefore, her earlier application was withdrawn. When there is no change in the circumstance, further chance of release on bail cannot arise. Rather at the end of the submissions learned Advocate for the applicant has pointed out that charge has been framed by the concerned Court and the Examination-in-Chief of witness No.1 has been conducted, however, he says that thereafter for about a year there is no progress. The change in the circumstance is rather trial has began. No doubt, the concerned Trial Judge should see that the matter is taken up at once and without much delay the trial gets over. The applicant

has not produced copy of the roznama and, therefore, it cannot be attributed that the delay is on the part of the prosecution.

6 Learned Advocate appearing for the applicant has submitted that perusal of the entire charge sheet would show that the role attributed to the present applicant is slapping the deceased and the fatal blow is stated to have been given by co-accused Raju Paithankar by means of knife. With this kind of allegation forming ingredients of at the most Section 323 of the Indian Penal Code. The applicant is in jail since 28.07.2020 and, therefore, she deserves to be released on bail. Learned Advocate for the applicant has relied on **Babu Singh vs. State of Uttar Pradesh, (1978) 1 SCC 579**, wherein it has been held that -

“The petitioners were charged with an offence of murder but were acquitted by the Sessions Court and the State successfully appealed against the acquittal to the High Court. The petitioners thereafter came up to the Supreme Court exercising their statutory right of appeal and the petition for bail was presented which was, however, dismissed. On a second petition for bail the Supreme Court held :

(1) An order refusing an application for bail does not necessarily preclude another on a later occasion giving more materials, further developments and different considerations. While the Court should set store by the circumstance that the bail application was once rejected it cannot be said that the Court is barred from second

consideration at a later stage.

(2)

7 Per contra, the learned APP strongly objected the application and submitted that unfortunately the young boy of 18 years was required to lose his life and it is the present applicant who had instigated the co-accused. It was in fact on a trifle ground. In the trifle ground if the applicant can go to such extent, then by her release she would definitely retaliate and, therefore, there is danger to the life of the witnesses.

8 The prosecution story is required to be considered here. Informant Prabhakar Shinde is the father of deceased Pritesh. Pritesh was aged 18. Prabhakar had lodged report on 27.07.2020 stating that around 10.45 p.m. on 26.07.2020 his son Pritesh took amount of Rs.100/- and went outside along with his friends Vinod Gaikwad and Satyam Jadhav. Thereafter, around 11.00 p.m. when Prabhakar was taking dinner, he heard noise in the galli and, therefore, he came out. He found that Raju Paithankar, Pravin Raut (son of present applicant) and the applicant were assaulting Pritesh. Vinod and Satyam were trying to separate them. Prabhakar went running near the place, at that time, Raju Paithankar gave blows of knife on the stomach of Pritesh. As a result of which Pritesh fell down. Pravin Raut had pressed the neck of Pritesh and present applicant was assaulting Pritesh

by hands. Prabhakar along with other persons separated them. Applicant was saying at that time that two days prior to the incident one Nandu Shelar had quarreled with them and along with Nandu Pritesh was there and, therefore, they have killed Pritesh. Pritesh was then taken to Hedgewar Hospital but he was not admitted and, therefore, he was taken to CIIGMA Hospital, where Pritesh was declared dead at 11.30 p.m.

9 The Postmortem Report in the column No.17 shows there were “surface injuries” out of those there is one stab wound over right lumbar quadrant of abdomen, obliquely placed. Others many are abrasions. There is corresponding injury in column No.21 and the probable cause of death is “shock and hemorrhage following stab wound to abdominal organs”. The perusal of the charge sheet would show that there is CCTV footage collected. There are statements of various witnesses including the statements of Vinod and Satyam. Statements of Vinod and Satyam are also recorded under Section 161 of the Code of Criminal Procedure. They were with the deceased and, therefore, it is necessary to consider as to what they have said. It is stated that around 10.30 p.m. Pritesh and Satyam went to Vinod and they were to proceed towards their friend Mayur. Pritesh and Vinod were on Acura driven by Pritesh and Satyam was also on that vehicle after Vinod. When they reached near Mayur’s house, they were obstructed by present

applicant, her son Pravin and co-accused Raju Paithankar. Present applicant told to co-accused Raju and Pravin that Pritesh was with Nandu when dispute took place two days prior to that date. Pritesh told her that he was not involved in the said dispute, but it was picked up by Nandu. The present applicant went on making accusations against Pritesh and she was not in a mood to listen. Thereafter, Vinod and Pritesh started to walk towards house of Pritesh and Satyam was bringing the two wheeler. The applicant was following them while shouting. Even after they stopped, present applicant started disputing and slapped Pritesh. Pritesh slapped himself and then told to the present applicant that he is not involved in the said incident. But, at that time Pravin came, he caught hold of the collar of the Pritesh. Vinod, in order to stop Pravin, caught hold of him and Satyam caught hold of applicant. Raju Paithankar then took out knife from his pocket and stabbed Pritesh. Satyam thereafter released applicant and obstructed Raju from inflicting second blow to Pritesh, as a result of which Satyam received injury to his fingers. Even after Pritesh fell down and vomited, Pravin was pressing the neck of Pritesh. He was pushed by Vinod and Satyam. Thereafter, Pravin and Raju fled away from the spot. Applicant was still there and started saying to Pritesh that he had inflicted bleed injury two days prior to the incident. This story is consistent in the statements of Vinod and Satyam under Section 164 of the Code of Criminal Procedure. Therefore, though the

present applicant may not be the person who had given the main blow; yet, it is to be noted that she was the person who had instigated and because of her instigation life of a young boy aged 18 is lost.

10 When there is prima facie evidence against the present applicant and the fact that she is also resident of the same area, possibility of tampering cannot be ruled out. The trial has already began. It would be for the concerned Judge to expedite the trial. The ratio laid down in **Babu Singh** (supra) cannot be denied, however, a case has to be decided on its own merits. The facts of the case are not such to release the applicant on bail. Hence, the application stands rejected. Criminal Application No.511 of 2022 stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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