

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

BAIL APPLICATION NO.1757 OF 2023

JYOTI SIDHU PAWAR
VERSUS
THE STATE OF MAHARASHTRA

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Mr. M. A. Tandale, Advocate for the Applicant.

Mr. K. S. Patil, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 30th OCTOBER, 2023.**

PER COURT:-

1. The applicant seeks regular bail in connection with Crime No.252 of 2022 registered with Omerga Police Station, District Osmanabad for the offences punishable under sections 302, 323, 504 r/w 34 of the Indian Penal Code.

2. The investigation was set in motion on the basis of the FIR lodged by Shivraj Pawar dated 22.05.2022. It is alleged that at about 06.00 am he received information from applicant (wife of his son Sidhu) that Sidhu (son of the informant) came at home at about 12.00 am and at about 07.00 am she found Sidhu laying on the mat. There was no movement and he was dead. The injuries were noted on his face, shoulder, joints, both hands, legs etc. When informant rushed at home, neighbours were gathered at the spot. When he asked the applicant as regards to the injuries found on the person of the deceased, she failed to explain the same. Thereafter, the informant asked Suraj i.e. son of the deceased Sidhu regarding incident, then Suraj disclosed that in the last night there was scuffle between the deceased and the applicant. The applicant, her mother Shakuntala had quarreled and exchange of abuses, then accused Dhanraj was given mobile

call. After arrival of the Dhanraj, deceased Sidhu was caught hold by the accused persons. Accused Dhanraj gave fists and kicks blows, whereas the present applicant squeezed face of the Sidhu. Although Sidhu attempted to escape, accused Dhanraj squeezed his mouth. Thereafter, accused Dhanraj and the applicant strangled the deceased using Gamja/Scarf. Resultantly, Sidhu lost his life. After registration of the FIR, the applicant came to be arrested alongwith other accused person. She is behind the bar from 23.05.2022. On completion of investigation, charge-sheet is filed.

3. Mr. Tandale, learned Advocate appearing for the applicant would submit that there is delay in lodging the FIR. Although, informant was knowing about the homicidal death of the deceased since morning hours, the FIR is lodged belatedly. He would further submit that except so called witness Suraj Pawar, who is later on made accused, there is no evidence as regards to the actual incident. He would submit that as per postmortem cause of death is shown as strangulation. The evidence on record is bereft to bring responsibility of the strangulation against any one of the accused. The applicant is behind the bar for more than one and half year. The indefinite incarceration of the applicant is not permissible. Mr. Tandale also relies upon the judgment of the Supreme Court of India in the matter of ***State of U.P. Through CBI Vs. Amarmani Tripathi***¹ and ***Niranjan Singh and Another Vs. Prabhakar Rajaram Kharote and Others***² to contend that merits and demerits of the evidence contained in the charge-sheet need not be looked into at the stage of bail and the Court would only ensure that the accused would be available for trial. The applicant being a lady is entitled for grant of bail.

¹ (2005) 8 SCC 21.

² 1980 Cri. L.J. 426.

4. The learned APP strongly opposes the prayer. He would submit that the FIR itself indicates the role of the applicant in commission of the offence. The spot panchanama shows that blood stains were found on the spot. The postmortem report shows the cause of death as strangulation, however multiple injuries are also noted on the person of the deceased. He would, therefore, submit that there is ample evidence to bring home guilt against the applicant.

5. Having considered submissions advanced, apparently the applicant is named in the FIR with her specific role. Although, FIR is based on hearsay information given by Suraj Pawar, who is subsequently added as accused finding his role alongwith other accused persons, the applicant was at home alongwith the deceased. The medical examination of the applicant shows that she had suffered bite injury on her finger during the scuffle. The postmortem report depicts multiple injuries on the person of the deceased. The cause of death is stated to be strangulation. There is no explanation about injuries found on the person of the applicant. Further when she was at home alongwith deceased in the night, her role in the commission of the offence is implicit. Section 106 of the Evidence Act puts burden on applicant to explain vital circumstance pointing finger towards her complicity. Looking to the aforesaid evidence on record, which is clinching and impeccable in nature, *prima facie* it can be inferred that the applicant has played important role in the offence. Ofcourse aforesaid evidence is subject to the scrutiny in the trial.

6. The salutary principles laid down in the judgments of the Supreme Court of India in case of ***State of U.P. Through***

CBI Vs. Amarmani Tripathi and Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others (supra) cannot be disputed. However, in the facts of the present case the evidence in the charge-sheet is *prima facie* sufficient to make out strong case against the applicant depicting her role in commission of the heinous offence. In that view of the matter, this Court is not inclined to exercise discretion in favour of the applicant. No case is made out for grant of bail. The application stands rejected. However, in case trial is not substantially progressed within a period of one year, the applicant shall be at liberty to move afresh for grant of bail before the Sessions Court.

(S. G. CHAPALGAONKAR)
JUDGE