

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

20 BAIL APPLICATION NO.1909 OF 2023

**RADHABAI VENKAT MARLAPALLE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Joydeep Chatterji
APP for Respondents: Mr. K.S. Patil.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 2nd NOVEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with crime No.110 of 2023 dated 9th May 2023 registered with police station Kingaon, District Latur, for the offences punishable under sections 302, 201, 177 r/w 34 of IPC

2. The investigation was set in motion on the basis of information given by Ramchandra Pundlikrao Gokhare, who is deputed as Police Sub-Inspector at Police Station, Kingaon, Taluka Ahmedpur. He states that on 8.5.2023, information was received to police station that Vyankat Narayan Marlapalle died because of the fall from second floor of his house, when they reached to the spot, they came to know that son of the deceased had been police station for lodging a report . The dead body of the victim was lying in the hall. Relatives informed that while victim was spitting from the gallery, he lost his balance and fell down on

the road. The post mortem on the dead body was conducted. It was suspected whether it was the case of an accidental fall or otherwise. On search of the house, blood stains were found on the mattress and the plywood of the bed. Similar blood stains were noted on bushes nearby the place of alleged fall of the victim. During investigation, the accused persons confessed that since the deceased was drunkard and used to harass accused Radhabai, in the night on 7.5.2023, all of them killed him.

2. The investigation progressed on the basis of aforesaid report. The applicant, who is wife of victim, has been arrested on 9.5.2023. On completion of investigation, charge sheet is filed. The plea of the applicant for grant of bail has been rejected by order of Sessions Judge, Ahmedpur dated 23rd August, 2023.

3. Mr. Joydeep Chattarjee, learned counsel appearing for the applicant would submit that case of the prosecution is based on circumstantial evidence. However, in entire charge sheet there is no material depicting incriminating circumstances that would pin-point the guilt against the applicant. He would submit that the statement of the applicant and other 2 accused recorded under section 161 of Cr.PC. cannot be given status of confessional statement and such statements before police are not admissible piece of evidence. He would further submit that the Investigating Officer failed to bring on record any other material to show complicity of the applicant in commission of offence. He invites attention of this Court to the post-mortem notes and opinion of the medical officer to suggest that injuries in column No. 17 are possible by blunt and hard object and contends that such injury is possible either

by assault or even due to fall of a person on hard surface. He would therefore submit that on the basis of the admissible evidence, no case is made out against the applicant.

4. Learned APP strongly opposes the prayer for grant of bail and submit that initially accused persons misled the investigation by reporting accidental death. However, during the course of investigation it has been revealed that it was a homicidal death and applicant and co-accused were assailants of the victim.

5. Having considered the submissions advanced, it is apparent that initially report was made to the police regarding accidental death of the deceased and certain injuries suffered by him. Police machinery suspected the homicidal death. Post Mortem was carried to find out the injuries on the person of the deceased. The applicants and co-accused have been arrested on suspicion. Perusal of the material in charge sheet would show that an axe has been recovered at the instance of accused Rameshwar by way of Discovery Panchanama under Section 27 of the Evidence Act. The statements of the applicant and co-accused persons recorded under Section 161 of Cr.P.C. are made part of the charge sheet, wherein, they have disclosed the incident in detail and confessed about murder. However, such statement recorded under section 161 of Cr.P.C. cannot be accepted as admissible evidence against the applicant in view of Section 25 of Evidence Act. Even otherwise, assault on the victim is attributed to accused Rameshwar. Minimum role is attributed against the applicant. Prima facie, medical evidence on record is not conclusive to establish homicidal death although there are incriminating circumstances requiring trial.

6. In that view of the matter, particularly when the applicant is a lady, her detention need not be continued. She is behind bars for more than 5 and ½ months. Hence, a case is made out for grant of bail, however, on certain conditions.

ORDER

- (i) The Bail application is allowed.
- (ii) Applicant – Radhabai Venkat Marlapalle, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in connection with Crime No. 110 of 2023 registered with Police Station Kingaon, Dist. Latur, for the offences punishable under Sections 302, 201, 177 r/w. 34 of IPC on the following conditions :-
 - (a) The applicant shall not tamper with the prosecution witnesses.
 - (b) She shall not tamper with the prosecution evidence.
 - (c) She shall attend the trial on each and every effect date.
- (iii) Application stands disposed of accordingly.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-