

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1696 OF 2022

Ashok Bajrang Hipparkar

... Applicant

v/s.

The State of Maharashtra

.... Respondent

Ms. Vilasini Balkrishnan i/b. Mr. Jaydeep Mane for the Applicant.

Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th APRIL, 2023.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is facing trial in Sessions Case No.13/2022 pending on the file of District and Sessions Court, Pandharpur, Dist. Solapur. The said case arises from C.R.No.1334/2021 registered at Sangola Police Station, Solapur for offences punishable under sections 302, 201 of the Indian Penal Code.

2. Heard learned counsel for the Applicant. She states that there is no prima facie material to show the involvement of the Applicant in commission of the crime. She states that there is material discrepancy in the statement of the child witnesses and said statement cannot be relied upon. Moreover, no identification parade was held to establish

the identity of the Applicant. She further submits that there used to be constant quarrel between the deceased and her husband and the possibility of the husband causing death of the deceased cannot be ruled out.

3. Per contra, learned APP submits that apart from the statement of the sons of the deceased, there are other circumstances to show the involvement of the Applicant in the said crime. He submits that mobile phone of the deceased was recovered at the instance of the Applicant. Furthermore, the statement of one of the witnesses – Shubhangi also indicates that she has seen the Applicant entering the house of the deceased at the relevant time. He states that CDR also shows presence of the Applicant at the place of the incident.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The brother-in-law of the deceased – Dadaso Dagdu Patil has lodged the FIR alleging that some unknown persons caused death of his sister-in-law – Rupali. The facts narrated in the FIR prima facie reveals that said Rupali was having illicit relationship with some villagers. Her husband learnt about the same and that there used to be

fight between them. He has stated that the husband of the deceased left the house about one month prior to the incident. The deceased was staying in the house along with her two minor children.

6. On 21/10/2021, at about 05:00 a.m., while he and his wife were returning home from field, he saw the children of the deceased crying. When they entered the house, they found that Rupali was lying on the floor motionless with her saree pulled upward. When they called out to her, she did not respond. The first informant informed other villagers and thereafter, reported the incident to the police.

7. The body of the deceased was sent for post mortem. The Post Mortem Report reveals that there was spinal cord injury due to fracture of cervical spine at C₂ and C₃ vertebrae. The Doctor has opined that the death was caused due to said spinal injury. The material on record prima facie reveals that the death of the deceased was homicidal.

8. The statement of the two minor sons of the deceased were recorded. One of the sons was 07 years of age. He has stated that the Applicant used to visit their house in the absence of his father. He has stated that his mother used to refer to him as Anjali. He claims that the person who used to visit their house was from the same village and his

name is Ashok Hipparkar. He has stated that he had visited their house at the relevant time and that there was quarrel between his mother and the Applicant – Ashok. He has stated that when they had heard them shouting, he and his brother – Omkar went to see their mother and the Applicant threatened them and told them to go to sleep. He has stated that after some while, he heard his mother screaming and that the Applicant ran away from the house.

9. The statement of Omkar who was 05 years of age reveals that one person by name Anjali and another person had come to their house. He has stated that the said person – Anjali is also known as Sudhakar and he would occasionally visit the house. He has stated that the said Anjali had stick in his hand and he assaulted his mother.

10. It is true that the witness – Onkar has not identified the Applicant by name and no test identification parade was held. It is further to be noted that the 2nd witness – Sanskar who was 07 years of age, has stated that he knew the Applicant since they are the resident of the same village. He has identified the Applicant by his name. The statement of this witness prima facie reveals that the Applicant had visited the house of the deceased and that there was a fight between

the Applicant and the deceased and he heard the deceased screaming and then she fell on the floor and the Applicant ran away from the house. This witness, though a child witness, prima facie appears to be reliable.

11. The statement of Shubhangi who is the niece of the deceased and who lives in the neighboring house also indicates that she had seen the Applicant entering the house of the deceased on the relevant night and that he had left the house at about 01:00 a.m. The material on record prima facie reveals that the mobile phone of the deceased was recovered at the instance of the Applicant under panchanama drawn under section 27 of Indian Evidence Act. The CDR also prima facie shows the presence of the Applicant at the place of the incident. The offence is of serious nature. Considering the gravity of the offence, I am not inclined to exercise discretion under section 439 of Cr.P.C. in favour of the Applicant.

12. Hence, the Application is dismissed.

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(SMT. ANUJA PRABHUDESSAI, J.)